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Advocate High Court
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THE
ALL INDIA DIGEST

SECTION II (CIVIL)—1811-1911

BY

T. V. SANJIVA ROW
First Grade Pleader, Trichinopoly

WITH THE HELP OF

P. RAMANATHA AYER, B.A., B.L.
AND
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VOL. X

Vacation—Zuripeshgi Lease and Tables of Cases.

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ABBREVIATIONS EXPLAINED.

REPORTS.

A.	Indian Law Reports, Allahabad Series.
Agra	Agra High Court Reports.
A. L. J.	Allahabad Law Journal.
A. W. N.	Allahabad Weekly Notes.
B.	Indian Law Reports, Bombay Series.
B. H. C.	Bombay High Court Reports.
B. L. R.	Bengal Law Reports.
Bom. L. R.	Bombay Law Reporter.
Bourke	Bourke's Reports.
Bur. L. R.	Burma Law Reports.
C.	Indian Law Reports, Calcutta Series.
C. L. J.	Calcutta Law Journal.
C. L. R.	Calcutta Law Reports.
C. W. N.	Calcutta Weekly Notes.
C. P. L. R.	Central Provinces Law Reports.
Cor.	Coryton's Reports.
Hay	Hay's Reports.
Hyde	Hyde's Reports.
I. A.	Law Reports, Indian Appeals.
Ind. Cas.	Indian Cases.
Ind. Jur. N. S.	Indian Jurist, New Series.
Ind. Jur. O. S.	Indian Jurist, Old Series.
Knapp	Knapp's Reports.
L. B. R.	Lower Burma Rulings.
M.	Indian Law Reports, Madras Series.
M. H. C.	Madras High Court Reports.
M. J.	Madras Jurist.
M. L. J.	Madras Law Journal.
M. L. T.	Madras Law Times.
M. W. N.	Madras Weekly Notes.
Marsh.	Marshall's Reports.
M. I. A.	Moore's Indian Appeals.
Moo. P. C. C.	Moore's Privy Council Cases.
N. L. R.	Nagpur Law Reports.
N. W. P. H. C.	North-West Provinces High Court Reports.
O. C.	Oudh Cases.
P. R.	Punjab Record.
P. L. R.	Punjab Law Reporter.
P. W. R.	Punjab Weekly Reporter.
R. & J.'s	Rafique and Jackson's Oudh Privy Council Decisions.
Sar.	Saraswati's Privy Council Judgments.
S. L. R.	Sind Law Reporter.
Suth.	Sutherland's Privy Council Judgments.
U. B. R.	Upper Burma Rulings.
W. R.	Sutherland's Weekly Reporter.

OTHER ABBREVIATIONS.

Appl.	Applied.
Appr.	Approved.
Cons.	Considered.
D. or Distd.	Distinguished.
Disc.	Discussed.
Diss.	Dissented from.
Exp.	Explained.
F	Followed.
(F. B.)	Full Bench.
Obs.	Observed on.
(P. C.)	Privy Council.
R. or Refd. to	Referred to.
Rel. on.	Relied on.
(S. B.)	Special Bench.

N.B.—In the Punjab Record and the Punjab Law Reporter, and also in the Punjab Weekly Reporter, the cases are known by theirnumbers and not by the pages where they are printed; (*e.g.*) 4 P. R. 1910 would mean Case No. 4, in the Punjab Record of 1910. The same explanation applies to the Punjab Law Reporter as well as to the Punjab Weekly Reporter also. It has also to be remarked that the Punjab Record, the Punjab Law Reporter and the Punjab Weekly Reporter, have been divided into two sections, Civil and Criminal.

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Valuation of Appeal—*continued.*

as well as to Courts of first instance, and provide that the value of the subject-matter of a suit for purposes of Court-fees and the value for purposes of jurisdiction shall be the same. The plaintiff instituted a suit of the nature mentioned in s. 8 of Act VII of 1887, and valued his claim at Rs. 664 for purposes of Court fees and at Rs. 14,000 for jurisdictional purposes. The appeal from the decree of the Court of first instance was held to lie to the District Court and not to the High Court. BAI VARUNDA LAKSHMI v. BAI MANE GAVRI, **18 B. 207.** [*F.*, 50 P.R. 1896, 6 C.L.J. 427=11 C.W.N. 705 ; *Appl.*, 63 P.R. 1902, 6 P.R. 1904 ; *Appr.*, 32 C. 734=9 C.W.N. 690 ; *R.*, 20 B. 265, 6 O. C. 255.]

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Valuation of Appeal—*continued.*

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(12)—*Law at time of presentation, applicable.*—The valuation of an appeal must be according to the Act in force at the time of its presentation, and the original valuation under a Law obsolete at the period of appeal can have no influence on the decision. ANONYMOUS, **5 M.H. C. App. 44.**

(13)—*Court-fees—Act* XXVI *of* 1867—*Appeal filed after Court Fees Act came into operation — Stamp duty.*—An appeal filed after the Court Fees Act came into operation should be stamped according to the provisions of that Act, although the suit was instituted while Act XXVI of 1867 was in force. MUSSAMUT BUGOBUTTY KOOER v. MUSSAMUT KUSTOOREE KOOER, **15 W.R. 272.**

(14)—*Bengal Civil Court Act* (VI *of* 1871), s. 22—*Appeal—Value of subject matter in dispute in execution of decree—Jurisdiction—High Court or District Court.*—When the matter in dispute in an original suit heard by a Subordinate Judge, exceeded Rs. 5,000 in value, the appeal against an order passed in execution of decree, in which the matter in dispute is less than Rs. 5,000, lies to the High Court, and not to the District Court. MAHOMED HOSSEIN KHAN v. SHIB DYAL, **5 N.W.P. 108, F.B.** (9 B.L.R. 190, *F.*) [*F.*, 10 A. 524; *R.*, 5 N.W.P. 175, 12 A. 581.]

(15)—*Execution of decree—Appeal against order passed in—Jurisdiction determined by suit amount.*—The appeal against an order of a Subordinate Judge, passed in execution of decree, where, although the value of the property in dispute exceeds Rs. 5,000, yet the matter in dispute in the original suit was below that amount, lies to the District Court and not to the High Court. CHUNDERBHAN SINGH v. MAHUNT JAIRAM GEER, **5 N.W.P. 175.** (5 N.W.P. 108, *R.*) [*R.*, 12 A. 581=10 A.W.N. 203.]

(16)—*Suit on several causes of action—Distinct trial— Appeal — Jurisdiction.* — A suit valued at Rs. 13,777/-was brought against several defendants whose interests were not identical. The original Court being of opinion that the suit was composed of several causes of action, ordered separate trials and tried each cause separately. The several trials were numbered and registered as separate suits. An appeal from the decision in one of the suits valued at Rs. 149 was preferred to the High Court. *Held* that the appeal did not lie to the High Court. RAM COOMAR DOSS v. BIDHOO MOOKHEE DOSSEE, **15 W R. 31.**

(17)—*Remand by High Court—Decree of lower Court after re-trial—Appeal—Zillah*

Valuation of Appeal—*continued.*

Judge—Value of subject-matter beyond Judge's jurisdiction—Proceedings subsequent to first decree "ultra vires."—A suit (the value of the subject-matter of which, was more than Rs. 5,000) which had been instituted in the Court of a Subordinate Judge was remanded by the High Court in special appeal after it had been appealed to the District Judge. The Subordinate Judge, after re-trial, passed a decree, which was again appealed to the District Judge, who however declared that it was not cognizable by him as the value of the property was beyond his jurisdiction. *Held* in regular appeal by the High Court, that the entire proceedings, subsequent to the first decree of the Subordinate Judge, were "*ultra vires*," as the District Judge was not competent to hear the appeal from the first decree and the High Court had no jurisdiction to entertain the special appeal. BABOO THAKOOR PERSHAD SINGH v. MAHADEO SING, **5 N.W.P. 210.**

(18)—*Act* VI *of* 1862, *B. C.*, s. 9, *measurement of lands under, when zemindar can be precluded from benefit of stamp-duty on petition of appeal.*—This was a suit by a Zemindar under s. 9 of Act VI of 1862 to measure the lands in the possession of his ryots. Both the lower Courts dismissed the case, the Judge holding that long possession of the ryot at a fixed rate of rent raised the presumption that, when the Zemindar gave the lease, he had no intention of ever interfering with it, or of measuring the land thus granted. *Held* that there must be some express restriction before a Zemindar can be precluded from the benefit given him by s. 9, and no presumption, even if one were raised by the long possession of the ryot, would be sufficient. OOMA CHURN BISWAS v. SHIBNATH BAGCHEE, **8 W. R. 14.**

(19)—*Court-fee—Execution case—Miscellaneous appeal.*—Certain property having been attached in execution as belonging to the judgment-debtor, a party in no way connected with the case in execution claimed the property and put in his objection claiming *bona fide* to be in possession of the property, on his own account. The Court executing the decree directed the claim to be numbered and registered as a suit between the decree-holder as plaintiff, and the claimant as defendant, under s. 229, Act VIII of 1859. The claimant appealed against that order and the lower appellate Court dismissed the appeal on the ground that the claimant had no *locus standi* in the case in execution and could not, therefore, object to its issuing. Against that order, a special appeal was preferred on a stamp for ordinary petitions. *Held* that the appeal was in the nature of miscellaneous appeal and that it was properly stamped. MOHESH CHUNDER BANERJEE v. CHUNDER MONEE DABEE, **9 W.R. 139.**

(20)—*Act* VIII *of* 1859, *s.* 119—*Application to set aside* ex parte *decision, appeal from order rejecting, stamp required for.*—The stamp paper

Valuation of Appeal—*continued.*

spoken of in s. 119, upon which a petition of appeal from an order refusing to set aside an *ex parte* decision has to be written, should be of the value required for miscellaneous petitions to the Court, *v.z.*, two rupees. On the Deputy Registrar re-submitting the above case for orders of the High Court on the point whether such an appeal was to be admitted and treated as a regular appeal or as a summary one, the High Court answered that it was in favour of the admission and treatment of the appeal as a summary one. PARBUTTY v. GREEDHAREE LALL, **4 W.R. Mis. 15.**

(21)—*Madras Civil Courts Act* (III *of* 1873), s. 13—*Value of original suit fixes jurisdiction.*—According to s. 13 of Act III of 1873, it is the money value of the original suit that fixes the jurisdiction throughout the subsequent litigation in its several stages. Where the amount of the original suit is more than Rs. 5,000, and an appeal is preferred to the District Court, but the amount in dispute in the appeal does not exceed Rs. 5.000, the District Court has no jurisdiction to hear the appeal. MUTHUSAMI PILLAI v. M. CHIDAMBARA CHETTI, **7 M. H. C. 356.**

(22)—*Appeal—Dismissal of suit—Valuation of appeal—Necessity for inclusion of interest from date of suit.*—Where an appeal is preferred from a decree dismissing a suit on a bond, the appellant need not, in valuing the appeal, include the amount of interest accruing subsequent to the date of suit and pay stamp duty upon the amount of such interest. SRINIVASA ROW v. RAMASWAMI CHETTI, **10 M.L J. 144.**

(23)—*Mode of estimating the appealable value—Interest given by decree to be added to the principal.*—Whether interest subsequent to the date of the decree can be added, is a question for the discretion of the Judicial Committee. GOOROOPERSAD KHOOND v. JUGGUTCHUNDER, **3 W.R. P.C. 14=8 M.I.A. 166=13 Moo. P. C. 472=1 Suth. P.C J. 399=1 Sar. 742.**

(24)—*Costs—"Subject-matter in dispute" in appeal—Court-fee.*—When apart from and independently of any other reliefs which an appellant seeks in an appeal from a decree, he seeks distinct relief on the ground that by the decree under appeal the costs of the parties in the proceedings which terminated with the decree have not been properly assessed or apportioned, the appellant makes the costs the subject-matter of dispute in the appeal and is therefore bound to pay Court-fee stamp for the same. REFERENCE UNDER COURT-FEES ACT, S. 5. **4 M.L.J. 148.**

(25)—*Valuation—Appeal—Declaratory decree—Mowrosee tenure—Court fee.*—Where the object of an appeal is to vary the judgment of the Court below by conferring upon the plaintiff a mowrosee tenure of a land at a fixed rent, instead of an ordinary tenure at a fluctuating rent, the value of the claim in appeal is the difference in the value of land as held by one tenure or the other; as this is an extremely difficult calculation where the plaintiff has valued his claim in appeal, the proper course would be to fix the stamp according to that valuation. KEBUL RAM MUNDUL v. W. S. WELLS, **24 W.R. 454.**

(26)—*Suit for declaration and injunction—Valuation of suit—Act* VII *of* 1870 (*Court-Fees Act*), s. 7, *cl.* 4 (*c*)—*Act* VI *of* 1888 (*Bombay Taluqdari Act*), s. 11—*Jurisdiction—Stamp Act* (VII *of* 1887), s. 8.—A suit for a declaration of the plaintiff's share in certain taluqdari villages, and for a temporary injunction to restrain the defendant from cutting and removing timber from certain forests, or, in the alternative for a direction to the defendant to keep correct and proper accounts of timber removed from those forests, was instituted in the Court of a First-class Subordinate Judge. The claim was valued by the plaintiff at Rs. 230. The Sub-Judge dismissed the suit for want of jurisdiction and held that, as the object of the plaintiff in bringing the suit was to obtain a division by actual partition, he must apply, in the first instance, to the Taluqdari Settlement Officer under s. 11 of Act VI of 1882 (Bombay Taluqdari Act). The plaintiff preferred an appeal to the High Court. An objection was taken in second appeal on behalf of the defendant that the appeal lay only to the District Court. *Held* that the suit being one for a declaration and consequential relief under s. 7, cl. 4 (*c*) of the Court-Fees Act and the claim being valued at Rs. 230 only, the appeal lay to the District Court under s. 8 of Act VII of 1887. GULABSINGJI v. LAKSHMAN SINGJI, **18 B. 100.** [*R.*, 20 B. 265, 6 O.C. 255.]

(27)—*Appeal—Court-fee — Suit for possession.*—The plaintiff sued for possession of land valuing his relief at Rs. 1,015, but the Court of first instance found the value of the land to be Rs. 6,090, and ordered the plaintiff to pay Court fee accordingly. The plaintiff failed to obey the order of the Court and the suit was in consequence dismissed. The plaintiff appealed, but the lower appellate Court dismissed the appeal as the order was not appealable. The plaintiff appealed to the High Court, valuing his relief at Rs. 245, being the difference between Rs. 325, the Court fees on Rs. 6,090 and Rs. 80, the Court fees on Rs. 1,015. *Held* that the relief was correctly valued. DURGA PRASAD v. RAGHUBAR DIAL, **A.W.N. 1882, 244.**

(28)—*Valuation of suit—Suit for account—Appeal—Court Fees Act* (VII *of* 1870), s. 11—*Bombay Civil Courts Act* (XIV *of* 1869), s. 26.—In a suit for an account of partnership transactions, the plaintiff valued his claim at Rs. 600, alleging that it was impossible for him to state the exact amount of his share of the profits before the accounts were taken, and undertaking to pay additional Court-fees if more were found due to him. The Subordinate Judge passed a decree by which he awarded to the plaintiff a sum of Rs. 30,000 and odd; and the plaintiff, thereupon, paid the additional Court-fees required under s. 11 of the Court

Valuation of Appeal—*continued.*

Fees Act, 1870. The defendant appealed to the High Court from the decree and it was contended that the appeal lay to the District Court and not the High Court. *Held* that the value of the subject-matter of the suit exceeded Rs. 5,000, and the appeal therefore lay only to the High Court under s. 26 of the Bombay Civil Courts Act, 1869. IBRAHIMJI ISSAJI v. BEJANJI JAMSEDJI, **20 B. 265**. [*Doubted*, 22 B. 963; *R.*, 58 P.R. 1902, 6 O.C. 255.]

(29)—*Court Fees Act* (VII *of* 1870), *s.* 17—*Claim for rent in suit for redemption—Distinct causes of action—Court-fee on appeal.*—The plaintiff in this case, independently of his claim for redemption, sought also for a distinct relief in respect of rent. The right to redeem and the claim to arrears of rent were two distinct and separate causes of action. The Court of first instance refused the redemption and allowed only a part of the rents claimed. The arrears of rent had not been intended to be set off against the mortgage-debt. Under the circumstances, the Court-fee for the appeal was held to have been rightly computed on the mortgage amount and on the amount of arrears of rent disallowed by the lower Court. RAMA VARMA RAJA v. KADAR, **16 M. 415**. [*R.*, 7 O.C. 152.]

(30)—*Court Fees Act* (VII *of* 1870), *s.* 7, *cl.* 9—*Appeal from redemption suit, valuation for purposes of Court-fees—Madras Civil Courts Act*, III *of* 1873, *s* 13—*Suits Valuation Act* VII *of* 1887, *s.* 11—*Value of subject-matter of mortgage suit, for purposes of appeal.*—In a suit for redemption of one-fourth part of the entire mortgaged property on payment of one-fourth of the mortgage-debt, the Court exempted a certain portion of the entire property from liability to the mortgage-debt and decreed redemption of one-fourth part of the remainder of the property mortgaged. On plaintiff's appeal from the decree, the *ad valorem* Court-fees ought not to have been computed on the value of the land exempted, as was arbitrarily done by the plaintiff, but the appeal should be valued as required by s. 7, cl. 9 of the Court Fees Act, at one-fourth of the mortgage-debt. [*R.*, 14 C.P.L.R. 154, 23 P.R. 1909=197 P.L.R. 1908; *D.*, 30 M. 96=16 M.L.J. 458=1 M.L.T. 311.] Under s. 13 of the Civil Courts Act, the High Court has appellate jurisdiction in cases heard by a Subordinate Judge, only when the amount or subject-matter of the suit exceeds Rs. 5,000. Where the value of the subject-matter of the suit is below that amount, the appeal lies to the District Court. S. 11 of the Suits Valuation Act does not apply where all that has to be determined is the real value of the subject-matter of the suit before the lower Court. The erroneous view of that Court will not be binding when the question is not, whether or not it had jurisdiction, but to what Court an appeal lay therefrom. VASUDEVA v. MADHAVA, **16 M. 326**.

(31)—*Mortgage—Appeal—Valuation of.*—In two suits brought by mortgagors to redeem or recover their property on the ground that the

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mortgage debt had in each case been satisfied from the profits of the land, the plaintiffs got a decree. The defendant appealed without any dispute relating to proprietary right, or the right of possession, but alleging that the mortgage debt had been satisfied and that his lien on the land, therefore, continued. *Held*, that the valuation for the purpose of stamp in the appeal should have reference, not to the value of the mortgaged property, but to the value of that which was disputed in the appeal, *viz.*, the value of the lien for the mortgage-debt or incumbrance. MAHOMED SHERUN KHANAND v. MUSSER KOONDUN LALL, **Agra F.B. 158=Ed. 1874, 119.**

(32)—*Further appeal to Chief Court of the Punjab—Valuation for purposes of jurisdiction—Punjab Courts Act*, 1884, *s.* 40 (1), (*b*)—*Suit for possession of land after foreclosure of mortgage.*—This was a suit for possession of land assessed to land revenue, on the allegation of an already completed foreclosure. The question for decision was whether having regard to s. 40 (1) (*b*), of the Punjab Court's Act, 1884, the value of the property was such as to give a party a right of further appeal to the Chief Court. *Held*, 30 times *Jama* assessed on the land being less than Rs. 1,000, a further appeal was prohibited by s. 40 (1) (*b*), of the Act. The contention that the property involved in the foreclosure decree was worth more than Rs. 1,000, and, that, consequently a further appeal was permissible, was rejected as untenable. VEIR SINGH v. SIRMUKH SINGH, **84 P.R. 1906=66 P.L.R. 1907.** (24 P.R. 1906, *R.*)

See BOM. ACT VI OF 1888, ss. 16, 21, **16 B. 408.**

See APPEAL—ARBITRATION, 3 B.L.R. App. 104=12 W.R. 50.

In three similar but unconsolidated suits—*See* APPEAL TO PRIVY COUNCIL—GENERAL, 6 C.W.N. 41.

See CIV. PRO. CODE, 1908, s. 110, 3 C.L.J. 257=10 C.W.N. 564.

Appeal against decree in suit under s. 330, Civ Pro. Code—Stamp-duty payable — *See* COURT FEES ACT, 1870, 29 M. 172.

Redemption-suit—Appeal regarding a portion of the amount decreed payable for redemption—Court-fee, liability to—*See* COURT-FEES ACT, 1870, s. 7, cl. 9, 2 A.L.J. 105=A.W.N. 1905, 40=27 A. 447.

See MEASUREMENT OF LANDS, 6 W.R. Act X, Rul. 13.

Valuation of Land.

See ACT X OF 1870.

See ACT I OF 1894.

See LAND ACQUISITION.

Under Land Acquisition Act, test as to—*See* ACT I OF 1894, s. 18, 32 C. 343.

Valuation of Property.

See PRE-EMPTION—PURCHASE-MONEY, 35 P.R. 1868, 83 P.R. 1868, 35 P.R. 1870, 12 P. R. 1873, 74 P.R. 1875.

Valuation of Suits.

See APPEAL TO PRIVY COUNCIL—CASES WHERE APPEALS LIE OR NOT.

See COURT FEES ACT, 1870.

See SUITS VALUATION ACT, 1887.

(1)—*Jurisdiction—Value of claim—Decree—Principle.*—It is the amount that the plaintiff claims in his plaint that determines the jurisdiction of the Court and not the amount eventually found due as damages. JOY DOORGA DASSEE v. MANICK CHAND BABOO, **16 W.R. 248.**

(2)—*Plaintiff's value of claim—Jurisdiction.*—In the absence of any circumstances suggestive of *mala fides* on the part of plaintiff, the value for purposes of jurisdiction is determined with reference to the claim made in the plaint and not with reference to the decision on that claim. IMAM DIN v. GHULAM MUHAMMAD, **101 P.R. 1900.** [*R.*, 19 P.R. 1908.]

(3)—*For stamp-duty and valuation of subject-matter for determining jurisdiction, difference between.*—The valuation of a suit or appeal for the assessment of Court-fees is quite different from the valuation of the subject-matter of a suit or appeal for determining jurisdiction of Courts, the former is arrived at by certain rules which determine an artificial value and the latter is the actual value of the property in litigation. AUKHIL CHUNDER SEN ROY v. MOHINY MOHUN DASS, **5 C. 489=4 C.L.R. 491.**

(4)—*Valuation of suit, with reference to jurisdiction and Court-fee.*—The value of the property in suit should guide the Court for the purpose of jurisdiction, whereas a different principle governs the stamp-fee. KIRTY CHURN MITTER v. AUNATH NATH DEB, **8 C. 757=11 C.L.R. 95.** [*F.*, 17 C. 680; *R.*, 15 C.P.L.R. 81, 120, 31 B. 73=8 Bom. L.R. 885; *D.*, 12 A. 506=10 A.W.N. 128, 32 C. 734=9 C.W.N. 690.]

(5)—*Jurisdiction—Valuation of suit—Valuation for the purposes of Court fees and jurisdiction—Suit for declaration and injunction—Court Fees Act* (VII *of* 1870), *s.* 7, *para* 4, *cls.* (*c*), (*d*)—*Suits Valuation Act* (VII *of* 1887), *s.* 8.—In a suit for a declaration of title to land and consequential relief (*viz.*, injunction) regarding the same, the Court must accept the value of the relief stated in the plaint for the purpose both of the Court fees and jurisdiction. VACHHANI KESHABHAI BALIABHAI v. VACHHANI NANBHA BAWAJI, **11 Bom. L.R. 30=33 B. 307=5 M.L.T. 230=1 Ind. Cas. 108.** (32 C. 734, *F.*)

(6)—*Separate reliefs claimed in the alternative—Valuation for purpose of jurisdiction—Object of s.* 17, *Court Fees Act.*—The general rule that the value for Court-fee governs the

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value for jurisdiction does not apply to cases, in which separate reliefs, no one of which exceeds the value of the property in suit, are claimed in the alternative in respect of that property. The object of s. 17 of the Court Fees Act is to prevent loss to the revenue, and the Suits Valuation Act contains no rule corresponding to s. 17. So, where houses, the subject-matter of a suit, are of a value which does not confer the right of further appeal, that right does not accrue merely by reason of separate claims, not exceeding that value, being sought in one suit. NUR ILAHI v. UMAR BAKSH AND PALA MAI. **41 P.R. 1910=65 P.W.R. 1910=6 Ind. Cas. 715=56 P.L.R. 1910.** (5 C. 489, *F.*; 96 P.R. 1895, 29 A. 155, 30 M. 61, *R.*)

(7)—*Jurisdiction—Valuation of suit for purpose of jurisdiction—Suits Valuation Act*, 1887, *ss.* 8, 9 — *Court Fees Act*, 1870, *s.* 7, *cl.* (iv).—*Held*, that the value of a suit governed by Rule IV framed by the Chief Court under s. 9 of the Suits Valuation Act VII of 1887, for the purpose of s. 70 (1) (*b*), proviso (ii) of the Punjab Courts Act, is the value assessed by the plaintiff under cl. (*b*) of that rule. *Semble*:—In a suit of this nature the amount of Court-fee payable is to be computed on the jurisdictional value of the relief sought. NAJM-UD-DIN v. MUNICIPAL COMMITTEE, DELHI, **6 P. R. 1904.** (50 P. R. 1896, 18 B. 207, 17 C. 680, 63 P. R. 1902, 24 M. 34, *R.*)

(8)—*Suit for jurisdiction—Value of suit—Rules of Chief Court—Book Circular No.* V *of* 1889—*S.*11, *Suits Valuation Act.*—Valuation of a suit for injunction has for purposes of jurisdiction been fixed by the rules of the Chief Court between Rs. 100 and 500 and a Third class Munsif has no jurisdiction to try such suit on the ground that the plaintiff had valued at less than Rs. 100. The defect of jurisdiction when he has so tried will not be cured by s. 11 of Suits Valuation Act as that section is limited only to cases of over-valuation or under-valuation in which the valuation depends on the discretion of parties or of Court. GANGA SAHAI v. SHEO LAL, **132 P.R. 1894.** [*F.*, 35 P. R. 1901=47 P. L. R. 1901.]

(9)—*Valuation of litigation for purposes of jurisdiction—Reg.* VI *of* 1816, *s.* 11 *and Reg.* III *of* 1833.—The valuation of the matters of litigation for the purpose of determining the jurisdiction of Munsifs is to be made in the mode prescribed by s. 11, Reg. VI of 1816, and Reg. III of 1833, and not in that prescribed by the Stamp Act. THIAGARAJA MUDALI v. RAMANUJA CHARY, **6 M. H. C. 151.** [*R.*, 1 B. 538, 4 B., 515, F.B., 4 M. 220, 5 M. 284, F. B.]

(10)—*Change in the law as to the mode of valuing suits for purposes of jurisdiction—Effect of.*—Where, by reason of a change in the law as to the mode of valuing suits for purposes of jurisdiction between the date of the original suit and the claim, the Court that dealt with the original suit ceases to have jurisdiction

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over it, it could not exercise jurisdiction over the claim, the value of which is in excess of its pecuniary jurisdiction at the date of the claim. MUTHAMMAL v. CHINNANA GOUNDAN, **4 M. 220.** [*R.*, 14 B. 627, 22 C. 830 ; *Cons.*, 13 M. 520.]

(11)—*Valuation of suit—Jurisdiction.*—A suit should be valued according to its real character. Where a plaint is so worded as that, taken strictly, the valuation would be such that the Court in which the plaint was filed would have no jurisdiction, the mere miswording of the plaint will not oust the Court of its jurisdiction. AJOODHIYA LALL v. GUMANI LALL, **2 C.L.R. 134.** [*Appr.*, 8 C. 126.]

(12)—*Valuation of suit—Jurisdiction.*—The valuation of a suit must be taken from the statement in the plaint, and if after going into the evidence, it is found that a particular item is improperly claimed, the Court has the means of punishing the plaintiff by saddling him with cost or in any other way. It is hardly fair to dismiss a suit upon a finding that a certain item has been improperly imported into the plaint for the express purpose of ousting the Court of Small Causes of its jurisdiction. MOHEE LALL v. KHETARAM MARWARY, **25 W.R. 76.** [*F.*, 24 C. 661=1 C.W.N. 556.]

(13)—*Valuation of suit—Jurisdiction—Plaintiff altering valuation of suit how punished.*—The valuation of a suit must be taken from the statement in the plaint, even if it be found on trial that a particular item has been improperly framed for the express purpose of ousting the jurisdiction of another Court. (25 W.R. 76, *F.*; 8 B 31, *Diss.*) The principle that a plaintiff cannot give jurisdiction to, or take away jurisdiction from, a Court by unwarrantable additions to his claim, ought to be limited to cases where the amount so claimed is such as the plaintiff could not recover. (1 B L.R.A.C. 91, 10 B.L.R. 193, 10 B. 370, *R.*) [*R.*, 2 O. C. 103.] A plaintiff who altered the valuation of a suit for the purpose of evading jurisdiction may be punished by having no costs allowed to him. HAMIDUNNISSA BIBI v. GOPAL CHANDRA MALAKAR, **24 C. 661=1 C.W.N. 556.**

(14)—*Court Fees Act* (VII *of* 1870), *s.* 12—*Scope—Suit for account—Removal of trustee—Appointment of trustee — Stamp—Civ. Pro. Code, s* 622—*Deficiency of stamp—Order to make up—Non-compliance—Dismissal—Decree — Appeal — Revision.*— S. 12 of the Court Fees Act applies merely to the valuation of property for the purpose of calculating the Court-fee when there is no question as to the article of the schedule of the Act with reference to which the valuation is to be made, and does not apply to a case in which it is contended not that the property had been wrongly valued, but that the relief has been improperly estimated by putting it under a wrong article in the schedule of the Act. It does not contemplate a case in which the Court refuses to hear a suit on the ground that a sufficient Court-fee has not been paid. (6 C. 249=6 C.L.R. 567, *R.*) [*App.*, 28 C. 334.] An order dismissing a suit for non-compliance with order of the Court to make the deficiency of stamp within a particular time is a decree within the meaning of the definition. An appeal lies against such an order. The High Court has no power to interfere, under its revisional powers, with an order passed by the Court of first instance to make up the deficiency of stamp. *In the matter of* OMRAO MIRZA v. MARY JONES, **12 C.L.R 148.** [*Diss.*, 14 C. 768 ; *F.*, 170 P.L.R. 1903; *Rel. on*, 14 C.W.N. 343 ; *R.*, 22 P.L.R. 1900.]

(15)—*Jurisdiction—Value of stamp—Value of subject-matter of dispute.*—The question of whether the Munsif's Court has jurisdiction or not, depends not upon the value of the stamp according to the rules of the Court Fees Act, but on the amount or value of the subject-matter of dispute, *i.e.*, the actual market value of what the plaintiff is suing for. CHUNDER NATH BHATTACHARJEE v. BRINDABUN SHAHA, **25 W.R. 39.** [*F.*, 1 C.L.R. 473 ; *R.*, 8 C.L.J. 196.]

(16)—*Valuation of suit—Jurisdiction.*—*Held* that, where the property in the suit did not exceed Rs. 1,000, the fact that the decision of the case involved consideration of the validity of a deed of gift conveying also property other than that in the suit, and that the aggregate amount of such property was of value greater than Rs. 1,000, did not alter the jurisdiction of the Munsif to entertain the suit. BHUP v. NAWAL, **A.W.N. 1882, 130.**

(17)—*Valuation—Jurisdiction — Stamp Act —Market-value of subject-matter* —If a Court was satisfied that the market-value of the subject of a suit or appeal presented to it was of such an amount as to bring the suit or appeal within its jurisdiction, it was bound to receive it. Where it was asserted and shown to the satisfaction of the Court that the market-value was in excess of the amount computed for the purposes of the Stamp Act, the Court must take notice of the actual value. MUSUMAT DHUNOO v. DAMODUR DOSS, **2 N.W.P. 177.**

(18)—*Suit under-valued—Issue found for plaintiff by first Court—Appellate Court dismissing suit for under-valuation—Act* VIII *of* 1859, *ss.* 31, 350.—Where, after the case had been gone into on the merits, one of the defendants raised an issue whether the suit was under-valued and the first Court tried that issue and found in favour of the plaintiff, but the appellate Court being of a contrary opinion dismissed the suit, *held* that the lower appellate Court should not have dismissed the suit on the ground of under-valuation, but must at least have given the plaintiff the option of supplying the necessary stamps, as the first Court would have done under s. 31 of the Civ. Pro. Code, Act VIII of 1859. If there was an error in valuation, it was an error of the first Court and the plaintiff should not have been made to suffer. Under s. 350 of Act VIII of 1859,

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the decision of the lower Court should not be reversed on appeal, as the order of the first Court was not one affecting the merits of the case or the jurisdiction of the Court. SYED WAJID ALI KHAN v. LALA HANUMAN PRASAD, **4 B. L.R. A.C. 139=12 W.R. 484.** [*Reversed on appeal*, 4 B.L R. A.C. 146, N.]

(19)—*Under-valuation of suit—Dismissal.*—Cases are not to be disposed of now-a-days on mere technicalities. Instead of non-suiting a case on account of under-valuation, the Judge may allow it to go to trial on its merits, on the plaintiff putting in a sufficient stamp to make up the proper valuation. GOOROODAS ROY v. CHUNDER COOMAR ROY, **1 W.R. 135.**

(20)—*Under valuation of suit—Dismissal—Appeal—Civ. Pro. Code*, 1877, *s.* 57.—Order dismissing a suit on the ground that it has been undervalued is an order which affects the merits of the case and is therefore appealable. KHOGENDRO NARAIN CHOWDHRY v. GOURI KANT NATH, **11 C.L.R. 300.**

(21)—*Act* XVI *of* 1868—*Subordinate Judge—Jurisdiction—Valuation.*—By Act XVI of 1868, a Subordinate Judge has jurisdiction to try suits below Rs. 1,000 only on reference by the Zilla Judge. If any question of the valuation of the property in dispute is raised by either of the parties, the final decision on that point is vested in the Court which hears the suit. UMA SANKAR ROY CHOWDHRY v. SYUD MANSUR ALI KHAN BAHADUR, **5 B.L.R. App. 6=13 W. R. 327.**

(22)—*Plaint praying for one of two reliefs in the alternative — Valuation — Court Fees Act* VII *of* 1870, *s.* 17, *if applicable—Cumulative relief.*—S. 17 of the Court Fees Act (VII of 1870) applies only to a case of cumulative relief sought by the plaintiff. It does not apply to a case where a plaint prays for one of two reliefs in the alternative. In such a case, the larger of the two reliefs determines the value of the claim. KASHINATH NARAYAN v. GOVINDA BIN PIRAJI, **15 B. 82.** [*Not F.*, 30 M. 61=16 M.L.J. 462=1 M.L.T. 426; *F.*, 11 O.C. 173; *R.*, 23 B. 486.]

(23)—*Suit to recover real estate.*—In a suit to recover real estate, the amount of the stamp is not conclusive of the value of the subject-matter. MOHUN LALL SOOKUL v. BEBEE DOSS, **7 M I.A. 428=1 Suth. P.C.J 458=1 Sar. P.C.J. 739.**

(24)—*Valuation of suit for purposes of jurisdiction, objections to, entertainable only on grounds of overvaluation of subject matter.*—Where the contest in the suit is merely as to whether the plaintiff can recover the whole or only portions of the relief claimed by him in the suit, and no objection has been raised on the ground of overvaluation of the subject-matter of the suit, any other pleas raised by the defence, as to right of the plaintiff to portions of the relief sought by him and which he would be entitled to on establishing the allegations of the plaint, ought not to be treated by the Court as constituting preliminary questions affecting the valuation of the suit and having to be determined in order to ascertain the proper Court in which the suit should be brought. KOTI PUJARI v. MANJAYA, **21 M. 271.** [*R.*, 6 O.C. 255.]

(25)—*Valuation—Plaint—Amendment.*—In the case of an amended plaint, the proper valuation is that ascertained at the date of the the amendment and not at the date of the original finding of the plaint. MORO VISHVANATH v. GANESH VITHAL, **10 B.H.C. 444.**

(26)—*Court Fees Act* (VII *of* 1870), *s.* 7 (*f*) *and s.* 11—*Valuation of suit for accounts, discretion of plaintiff to fix.*—By s. 7, cl. (*f*) of the Court Fees Act, VII of 1870, the plaintiff in a suit for accounts must state the amount at which he values the relief sought, but he is free to fix it as he thinks proper, subject to the provision of s. 11 which precludes the execution of the decree, in case it exceeds such value until the execution fee has been paid. GOVANDAS KASANDAS v. DAYABHAI SAVICHAND, **9 B. 22.** [*R.*, 10 B. 610, F.B., 12 B. 675, 13 B. 517, 19 B. 198, 20 B. 265.]

(27)—*Court Fees Act* (VII *of* 1870), *s.* 7—*Valuation of suit—Court's power in respect of—Civ. Pro. Code*, 1882, *s.* 54—*Procedure.*—A suit for an account was valued approximately at Rs. 16-15-0, and the plaintiff paid Court fees on that valuation. The lower Court, being of opinion that the suit really was one for money had and received, and valuing the claim at Rs. 1,000, called on the plaintiff to make good the stamp duty within a fixed time. The plaintiff having refused to pay the deficient stamp duty, the suit was dismissed under s. 54, cl. (*c*) of the Civ. Pro. Code (1882). *Held* that the lower Court committed a double error. Firstly if the suit was really one for accounts being taken, the plaintiffs were entitled to value the suit approximately as per provisions of s. 50 of the Civ. Pro. Code, (1882) and under s. 7, cl. (IV) of the Court Fees Act (VII of 1870). If the lower Court found that the suit was not one for an account, but the recovery of money, the plaintiff should have been called upon to value relief precisely. If the Court considered that the relief was under-valued, s. 54 (*a*) of the Civ. Pro. Code (1882) might be applied to the case. But the lower Court had no power whatever to make the valuation itself in the first instance and call on the plaintiff to pay the stamp duty thereon. BULVANTRAO v. BHIMA SHANKAR, **13 B. 517.**

(28)—*Suit affecting validity of adoption—Value for purposes of jurisdiction.*—Where the fact and validity of an adoption is the subject of the suit, its value for purposes of jurisdiction is the value of the interest that would be lost to the alleged adopted son if the adoption be declared invalid. KESHAVA v. LAKSHMINARAYANA, **6 M. 192.** [*Diss.*, 15 A. 378.]

(29)—*Suits Valuation Act* VII *of* 1887, *ss.* 4, 11—*Suit to set aside adoption, valuation of.*—The value for the purposes of jurisdiction of a

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suit to set aside an adoption, where it has not been designedly over or under valued, or where the valuation has not prejudicially affected its disposal on the merits, is the value put upon the suit by the plaintiff, and not the value of the property at stake. SHEO DENI RAM v. TULSHI RAM, **15 A. 378 = A.W N. 1893, 141,** (6 M. 192, *Diss.*) [*Appr.*, 32 C. 734 = 9 C.W.N. 690; *R.*, 42 P. R. 1901, 28 A. 545 = 3 A.L J. 266 = A.W.N. 1906, 99, 11 C.W.N. 705 = 6 C.L.J. 427.]

(30)—*Adoption, suit to set aside—Valuation of relief by plaintiff*—Forum *of Court—Jurisdiction—Restitution of conjugal rights, suit for —Jurisdiction of Munsif.*—It is competent to the plaintiff to value the relief claimed in his suit to set aside an adoption, and that valuation is to be taken to determine the *forum* of the Court to decide the suit. The decision in the case (31 C. 849, 8 C.W.N. 705, *R.*) as to the jurisdiction of a Munsif to entertain a suit for restitution of conjugal rights, is an *obiter dictum.* PROLHAD CHANDRA DAS v. DWARKA NATH GHOSH, **6 Ind. Cas. 636 = 14 C.W.N. 929.** (34 C. 352, 5 C.L.J. 400, 11 C.W.N. 458, *Appr.*)

(31)—*Suit by adopted son against adoptive father for declaration of adoption—Value of whole property determines jurisdiction.*—In a suit by an adopted son against the adoptive father for a declaration of his adoption the value of the whole property determines the jurisdiction and not the value of the moiety. An adopted son is an heir as well as co-parcener of his adoptive father and the right which the plaintiff seeks to establish is a right to the whole property. SUBBIAH v. JOGAYYA, **3 M. L.J. 46.**

(32)—*Suit for declaration of right to annuity —Stamp Act* X *of* 1862, *sch. A, s.* 2.—In a suit for a declaration of a right to an annuity (*varshasan*) the stamp for the petition of special appeal should be regulated by the market value of the annuity. And ten times the amount of the annuity might *prima facie* be assumed to be its market value, as enacted for analogous agreements by s. 2, sch. A of Act X of 1862. NARSINVACHARYA v. SWAMI RAJACHARYA, **5 B.H.C.A.C. 55.**

(33)—*Suit valuation—Suit by trustees in insolvency to set aside attachment.*—The valuation for stamp duty of a suit brought by the trustees in insolvency to set aside an attachment, should be calculated on the value of the lien claimed by the judgment-creditor. TRUSTEES OF PALMER'S ESTATE v. COLONEL BOMGARTNER, **3 Agra 104.**

(34)—*Arbitration—Award—Costs—Valuation —Appeal.*—An appeal lies in respect of costs from a decree enforcing an award passed on arbitration. (6 W.R. 188, *F.*) The object of valuing a suit is to determime the proper amount of stamp duty, and not for the purpose of assessing costs. So, a suit to enforce an arbitration award need not be valued. A Judge is not bound to give costs at a certain

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valuation. He may give whatever costs he thinks proper. KHODA BUKSH v. MOWLA-BUKSH, **14 W R. 255.**

(35)—*Civ Pro. Code,* 1882, *ss* 520, 521, 525, 526—*Application to file award—Court fee.*—An application for enforcing an award under s.525, Civ. Pro. Code, 1882, is not considered a suit, though it is to be numbered and registered as a suit, and might be stamped as an application. PALUT BHAGAT v. MONOHUR BHAGUT, **13 C.L.R. 171.**

(36)—*Valuation for jurisdiction Subject matter of suit to establish charge upon property.* —In a suit to establish a charge on property, if the value of the property is in excess of the charge, the valuation for purposes of jurisdiction is the amount of the charge. If the value of the property is less than the charge, then the value of the subject-matter is the value of the property. KRISHNAMA v. SRINIVASA, **4 M. 339.** [*R.*, 30 M. 335 = 17 M.L.J. 95 = 2 M.L.T. 116, 15 C.P.L R. 161 ; *D.*, 17 A. 69 ; *F.*, 30 M. 96 = 16 M.L.J. 458 = 1 M L.T. 311, 15 C. 104.]

(37)—*Suit for recovery of property subject to charge—Court Fees Act, s.* 7, *cl.* IX—Forum *of appeal.*—*Held,* that, where a plaintiff brings a suit for the recovery of certain property subject to a charge for an unknown amount, the value of the suit is the real value of the property, and not the supposed amount of charge, and the *forum* is to be determined accordingly. MOHAMMAD BAQAR v. N. M. BAQAR KHAN ALI, **10 O.C. 42.** [*R.*, 10 O.C. 291.]

(38)—*Document creating charge on immoveable property—Suit to cancel document on ground of fraud—Jurisdiction—Waiver.*—A person executed a document whereby he created a charge of Rs. 4,000 on certain immoveable property. In a suit by him to cancel the document on the ground of fraud, *held* that the plaintiff valued his relief at Rs. 4,000 and that the District Munsif had no jurisdiction to try the suit. An objection as to jurisdiction cannot be waived. NARAINA PUTTER v. AYA PUTTER, **7 M.H.C. 372.** [*R.*, 20 B. 736, 23 M. 490.]

(39)—*Declaration suit—Liability of property to sale in execution — Valuation of property — Jurisdiction of Court.*—In a suit to have certain property declared liable to sale in execution of a decree, the value of the property which the decree-holder seeks to have sold determines the jurisdiction, and it is immaterial whether the amount of the decree is higher than the limit of the Court's jurisdiction. DURGA PRASAD v. RACHLA KUAR, **9 A. 140 = A. W. N. 1886, 328.** (2 A. 799, *D.*) [*Contra*, 15 C. 104 ; *D.*, 17 A. 69 ; *R.*, 15 C.P.L.R. 161.]

(40)—*Suit for office.*— If the right to the Stanikum office carries with it the right to three other offices in the temple, they must all be valued for purposes of jurisdiction. SUNDARA v. SUBBA, **10 M. 371.**

(41)—*Suit for declaratory decree, valuation for jurisdiction.*—A suit brought to obtain a

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declaration of title to specific property should be instituted in that Court in which a suit to recover its possession ought to be filed on the ground of title. GANAPATHI v. CHATHU, **12 M. 223.** [*F.*, 15 M. 501; *D.*, 14 M. 78 ; *R.*, 15 M. 498.]

(42)—*Civil Court's Act (Act* II *of* 1873), *s.* 12—*Declaration of membership of a tarwad —Valuation for purposes of jurisdiction.*—Where a person alleging that he is the karnavan of the defendant's tarwad sues for a declaration of his status as a member, without any prayer for consequential relief, the suit must be valued according to the value of the tarwad property. IBRAYAN KUNHI v. KOMAMUTTI KOYA, **15 M. 501=2 M L.J. 255.**

(43)—*Suit by son for declaration that alienation, by father, of ancestral land was not binding on him after father's death — Valuation for purposes of jurisdiction.*—This was a suit by a son for declaration that an alienation by his father of ancestral land was not binding on him and would not affect his interests after the father's death. *Held*, that the value of the suit for purposes of jurisdiction ought not to be assessed at the amount of consideration for the alienation or sale, but at thirty times the annual revenue of the lands assessed to revenue *plus* the value of the property, if any, not assessed to public revenue. RAM RAKHA MAL v. BALWANT SINGH, **59 P. L. R. 1905=58 P. R. 1905.**

(44)—*Suit by decree-holder to declare his right to attach certain property—Decree amount exceeding value of property.*—In a suit by a decree-holder to declare his right to attach certain property in execution of his decree, the value will be the decree amount if the value of the property exceeds the decree amount ; but, if the latter exceeds the former, the value of suit will be the value of the property. MAYA MAL v. BELA SINGH, **121 P.R. 1890.** [*R.*, 94 P.R. 1908=74 P.W.R. 1908.]

(45)—*Right to declare property liable to attachment—Value of suit—Decree amount.*—The value of a suit to declare certain property liable to attachment for plaintiff's decree is the decree amount sought to be realised out of the property and not the value of the property. BHAI HARNAM SINGH v. MUSSAMMAT BHAGWAN DEVI, **50 P.R. 1890.** [*F.*, 42 P.R. 1901; *Cited*, 94 P.R. 1908=74 P.W.R. 1908.]

(46)—*Jurisdictional value of suit to establish right to attached property — Declaration.*—Where the amount of the decree, in execution of which property is attached, is less than the actual or alleged value of the property, the jurisdictional value of a suit to establish a right to the attached property must be held to be the value of the decree. (55 P.R. 1906, *F.*) The amount of the decree, in such cases, is really all that has to be regarded, for the decree can be satisfied and the attachment removed, on payment of the amount decreed, and it is to secure the decretal amount, and nothing else, that the decree-holder is presumed to be executing his decree. It is quite immaterial, that, in a subsequent paragraph of the plaint, the property attached is alleged to be worth considerably more than the value of the decree. ZORAWAR SINGH v. DEWA, **142 P.R. 1906=11 P.W.R. 1907=63 P.L R. 1907.** [*R.*, 94 P.R. 1908=74 P.W R. 1908.]

(47)—*Suit for declaration that sale of ancestral agricultural land would be void after alienor's death—Punjab Courts Act, s.* 40 (*b*).—For purposes of s. 40 (*b*) of the Act, the value of a suit for a declaration that a sale of ancestral agricultural land by a male proprietor would be void after the alienor's death, is the value of the land calculated at thirty times the land revenue, and not the amount of consideration for the sale. JALLA v. GEHNA, **60 P.R. 1907, F.B.=76 P.W.R. 1907=79 P.L R. 1908.** (145 P.R. 1892, *Appr*). [*Rel. on*, 106 P.R. 1908 =173 P.L.R. 1908.]

(48)—*Declaratory Suit—Right of inheritance —Subject-matter—Valuation.*—Whether a suit be merely for a decree declaratory of title to, or whether it be to establish title coupled with a prayer for possession of, the rights of the deceased person, the *inheritance* is the object in dispute; and the value of the estate is the actual value and not what it may eventually represent to the plaintiff. BAI MAHKOR v. BULAKHI CHAKU, **1 B. 538.**

(49)—*Possibility of succession—Interest of reversioner — Valuation* — Mere possibilities of succession are solely incapable of valuation, whereas with the aid of an actuary it is not difficult to put a money value upon the interest of a reversioner. BRAHMADEO NARAYAN v. BARJAN SINGH, **25 C. 778.** [*Appr.*, 30 B. 304=7 Bom. L.R. 742.]

(50)—*Suit for declaration and injunction—Court Fees Act,* VII *of* 1870, *s.* 7, *cl.* 4, *sub-sections* (*c*) *and* (*d*).—A suit for a declaration of right and for an injunction to prevent the first defendant from recovering from the second defendant, the Talukdari Settlement Officer, the amount of annual allowance, comes under s. 7, clause 4, sub-sections (*c*) and (*d*) of the Court Fees Act, and the valuation of the relief sought in the suit could be made by the plaintiff as he pleased and did not form part of the function of the Court. SARDARSINGJI v. GANPATSINGJI, **17 B. 56=P J. 1892, 144.** [*Appr.*, 32 C. 734=9 C.W.N. 690; *R.*, 19 B. 198, 23 B. 486, 63 P.R. 1902, 11 C.W.N. 705= 6 C.L.J. 427, 12 Bom. L.R. 149=34 B. 267.]

(51)— *Suit for declaration that a deed is not binding on plaintiff and for its cancellation and injunction to restrain defendant from enforcing the deed — Valuation—Jurisdiction.*—When the real value of the relief sought has been actually stated by a plaintiff, he cannot state a lower value for purposes of Court-fee computation and of jurisdiction. So where a person sues for a declaration that a mortgage deed executed in his name by his mother during

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his minority is not binding on him and for cancellation of the deed and for a permanent injunction restraining the defendant from enforcing the deed, the suit, must for purposes of jurisdiction, be valued on the amount of plaintiff's liability under the deed as stated in the plaint, and the plaintiff cannot substitute a lower and arbitrary value for purposes of jurisdiction. DEVIDAS v. RAMLAL, **7 N L.R. 190. (11 C.W.N. 705, *R.*)**

(52)—*Suit for cancellation of bond—Value of subject-matter—Jurisdiction.*—In a suit for the cancellation of a bond, the value of the subject-matter, for purposes of jurisdiction, is to be decided with reference to the principal amount, and not that amount with interest up to the date of suit. GULAB RAI v. MANGLI LAL, **6 A. 71=A.W.N. 1883, 216.**

(53)—*Suit for cancellation of a document—Value of subject matter in dispute.*—In a suit for the cancellation of a bond for a certain amount of money, which, the plaintiffs alleged, was executed by them under a wrong impression that it was for a lower amount with less interest, and in which they admit their liability to pay such lower amount and pay it into Court, the value of the subject-matter in dispute is the difference between such lower amount with less interest and the amount of the bond with the interest as stipulated for therein. KALI CHARAN RAI v. AJUDIA RAI, **2 A. 148.**

(54)—*Suit for cancellation and for delivery of mortgage-bond—Court Fees Act* (VII *of* 1870), *s.* 7, IV (*c*)—*Plaintiff's valuation—Jurisdiction.*—A suit for the cancellation and delivery up of a mortgage-bond executed by the plaintiff to the defendant falls under s. (7) iv (*c*) of the Court Fees Act and not under paragraph iv (*a*). In cases failing under s. 7, paragraph iv, the Law expressly provides (and only in that class of suits) that the plaintiff should state in the plaint itself, under the sanction of verification, the amount at which he values the relief sought, and the Court has no jurisdiction to decline to accept the same or to raise it, a power which is limited to cases provided for by s. 9 which relates to an estimate given by the plaintiff of the annual net profits of the land or the market-value of the land, house or garden as mentioned in s. (7), paragraphs v and vi. CHINNAMMAL v. MADARSA ROWTHER, **27 M. 480** [R, 8 Bom.L.R. 885=31 B. 73, 6 C.L.J. 427=11 C.W.N. 705.]

(55)—*Sale by father—Suit to set aside sale—Valuation.*—Where a plaintiff only sues for a declaration of his title to certain lands on reversal of the kobalas said to have been illegally executed by his father, he need not be compelled to value the case at the total of the consideration mentioned in those deeds. SHEO GOLAM SINGH v. BEJOYRAM PROTAB SINGH, **W.R. 1864, 317.**

(56)—*Jurisdiction—Suit to set aside sale of landed property—Value of suit.*—*Held*, that for purposes of jurisdiction the value of a relief claimed in a suit for a declaration to the effect that a sale-deed comprising landed

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property was invalid, must be calculated at thirty times the land revenue, and the consideration entered in the sale-deed is immaterial in determining the value. MURAD v. MUSSAMMAT GHULAM FATIMA, **71 P.L.R. 1902.**

(57)—*Suit to set aside sale-deed—Limitation—Act* XIV *of* 1859, *cl.* 16, *s.* 1—*Stamp.*—Where the plaintiffs brought a suit to set aside a sale deed where by one who had no right to the property sold it, it was *held* that the stamp which was calculated on the consideration mentioned in the sale deed was sufficient inasmuch as the plaintiffs did not seek to recover possession. It was further held that as they claimed only the annulment of a deed which prejudiced the title under which they alleged themselves to be in possession of the property to which the deed referred, the suit must be brought within six years from the date of the cause of action, according to cl. 16, s. 1, Act XIV of 1859. THAKOOR PATHUK v. RAM SOOMRUN LAL, **2 N.W.P. 433.**

(58)—*Court Fees Act, Sch. B, cl.* 11, *construction of—Civ. Pro. Code* (*Act* VIII *of* 1859), *s.* 31.—Plaintiffs who had been in possession of certain property sued to set aside a false sale-deed by which the defendants had purported to pass the said property. They had stamped their plaint on a valuation of the sum mentioned in the sale-deed. The Court of first instance dismissed the suit as not being properly stamped. *Held*, that the words in cl. 11 should not be so widely construed as to include the present claim and that there was no provision of law authorising the enforcement of a larger amount than had been paid. The Court of first instance, if it considered the valuation insufficient, should not have rejected the plaint without calling on the plaintiffs to make up the deficiency it conceived leviable. THAKOOR PATUCK v. RAMSOOMRUN LALL, **1 N.W.P. 16.**

(59) *Court-fees paid on valuation set forth in plaint—Suit not properly valued—Court Fees Act* (VII *of* 1870), *s.* 28—*Court not competent to extend time for payment of proper Court-fees—Civ.Pro.Code*, *s.* 54—In this suit, proper Court-fees had been paid on the plaint according to the plaintiff's own valuation under cls. 5 and 6 (*c*) of the Court Fees Act, though his calculation had been based on an undervaluation of the amount of the annual profits from the land. The officer of the Court, whose duty it was to examine the plaint, reported that it was properly stamped. It was not the officer's duty to check the details of the plaintiff's calculation, and the mistake or inadvertance referred to in s. 28 of the Court Fees Act is only the mistake or inadvertence of the Court or its officer. The case fell within s. 54 of the Civ. Pro. Code, and the Court of First Instance, not having had the power to fix a time either under cl. (*a*) or cl. (*b*) of that section so as to extend the prescribed period for limitation of suits, was *held* to have rightly rejected the plaint as under cl. (*c*)

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of the section. MUHAMMD AHMED v. MUHAMAD SIRAJUDDIN, **23 A. 423=A.W.N. 1901, 118.** [*Diss.*, 29 A. 749=A.W.N. 1907, 253=4 A. L.J. 636=2 M.L.T. 375, 123 P.R. 1907=82 P. W.R. 1907=3 M. L. T. 63; *N.F.*, 74 P.R. 1903 N=173 P.L.R. 1903; *F.*, 27 A. 411=A.W.N. 1905, 12=2 A.L.J. 55, A.W.N. 1904, 133, 28 A. 310=A.W.N. 1906, 21=3 A.L.J. 838; *R.*, 34 C. 20=11 C.W.N. 38=4 C.L.J.421=1 M.L.T. 355. 78 P.R. 1909=144 P.L.R. 1909=3 Ind. Cas. 605, 2 Ind. Cas. 1.]

(60)—*Suit found to be under-valued, liability of, to dismissal—Appellate Court not competent to remand for making up stamp-duty.*—This was a suit for possession of a share in a mehal, and for setting aside a kobalah by which the property had been illegally alienated. The plaintiffs valued their suit at three times the sudder jumma of the share claimed by them, and the first Court gave them a decree. The Principal Sudder Ameen considered that the suit was under-valued, the valuation not having included the necessary amount for the cancelment of the kobalah, and sent the case back to the Moonsiff with directions to call upon the plaintiffs to make up the proper amount of stamp-duty, and then to send the case up to the Judge for transmission to the proper tribunal. The High Court *held* that the Principal Sudder Ameen was wrong in returning the case to the Moonsiff as he did, for, the difference in valuation, if proved, affected the jurisdiction of the Moonsiff's Court, and s.350 of the Procedure Act would not apply; and the case ought to have been dismissed as not brought in the proper Court. The High Court also allowed the cross appeal to be taken by the respondent urging that the Moonsiff's valuation was correct because the plaintiff was not bound by the price said to have been paid under a kobalah which he averred to be collusive and which he was seeking to set aside. AUGOPURA CHOWDHRY v. MEAH BIBEE, **10 W.R. 207.**

(61)—*Suit to compel registration of two documents—Value — Jurisdiction.*—When two documents are executed by one and the same person and they create the same interest in the same property standing to each other in the relation of an operative and a superseded document, the value of the suit for the purposes of jurisdiction is the value of the interest intended to be created by the operative instrument. RAMAKRISHNAMMA v. BHAGAMMA, **13 M. 56.** [*F.*, 31 M. 89=17 M.L.J. 573=3 M. L. T. 73, F.B.]

(62)—*Court fee—Suit in ejectment by landlord Stamp according to market-value — Liability of defendant to pay excess stamp paid through mistake of Court.*—Where a landlord claims to eject a tenant, he claims to recover the tenant rights in the holding, and the stamp duty chargeable on the plaint should be determined with reference to the market value of that right only. A defendant is legally chargeable with that amount of stamp duty, which can legally be demanded from the plaintiff and not with the excess which he was obliged to pay through a mistake in law of the Court. AJUDHYA CHOWBEY v. DAIBEE SINGH, **3 Agra, Rev. 5.**

(63)—*Court Fees Act,* VII *of* 1870, *s.*7, *cl.* XI (*d*)—*Scope—Court Fees Act—Sch.* II, *cl.* 5—*Landlord and tenant — Right of occupancy, suit to contest — Ejectment — Tenant at will.* — Cl. XI (*d*) of s. 7 of the Court Fees Act applies only to suits brought by a tenant to dispute the validity of his landlord's notice to quit. Where the plaintiff sues to eject the defendant as being a tenant-at-will and the plaintiff's real object is to defeat the defendant's claim to the land as an occupancy-ryot, and thus the suit is brought to contest a right of occupancy, the plaint or memorandum of appeal must bear a Court-fee stamp of 8 annas under sch. II, cl. 5 of the Court Fees Act, 1870. *In re* BIBI NURJIHAN v. MORFAN MUNDUL, **11 C.L R. 91.** [*R.*, 1 L. B. R. 303; *Diss.*, 1 L.B. R. 303; *Expl.*, 1 L.B.R. 303.]

(64)—*Act* XXVIII *of* 1868, *ss.* 2, 19—*Suit for ousting occupancy tenant on payment of compensation — Price of hereditary tenure — Jurisdiction value—The* 30 *years' occupation necessary to exempt tenant from liability to ejectment.*—The valuation of the subject-matter for the purpose of jurisdiction, of a suit for ejectment on payment of compensation, under s. 19 of the Tenancy Act, should be computed on the value of the hereditary right of occupancy, the price which the tenure would fetch if put up to sale, and not the sum which the landlord has to pay to buy the tenant out under s. 19 of the Act. The operation of the last clause of s. 19 of the Tenancy Act cannot be limited to those tenants only who can prove a continuous separate holding for 30 years by themselves or by their immediate ancestors. The clause is applicable as well to the case of a tenant who can show a continuous occupation for thirty years by himself or by his immediate predecessor, as to a case where the periods during which the two have held, the one immediately following the other together amount to thirty years. BUTA SINGH v. PUNJAB SINGH, **28 P.R. 1879.**

(65)—*Jurisdiction of Court—Suit on death of an occupancy tenant for possession of holding on the ground that the defendant has no right to hold the same—Further appeal.*—Where, on the death of an occupancy tenant, any persons take possession of the holding on the ground that they succeed to it under s. 59 of the Punjab Tenancy Act, and the plaintiff, denying their right, sues them in the Civil Court for possession of the land, the value of the suit for purposes of jurisdiction of the original and appellate Courts is thirty times and not fifteen times the revenue, for the claim is on the ground that the defendants are in possession as trespassers. BHAGTA v. PHULLU SINGH, **117 P L.R. 1909=156 P. W. R. 1909=3 Ind. Cas. 980.**

(66)—*Valuation of suit by landlord for possession of immoveable property against tenant—*

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S. 7, cl. XI *(c), Court Fees Act and Suits Valuation Act, s.* 8.—Under s. 7, cl. XI *(c)*, Court Fees Act, a suit by landlord for the recovery of immoveable property from a tenant, including a tenant holding over after the determination of a tenancy, is valued according to the amount of the rent payable for the year next before suit, and the value for the purpose of jurisdiction will be the same under s. 8 of the Suits Valuation Act RAM CHAND v. RAM SUKH DAS, **27 P.R. 1910=30 P W R. 1910=5 Ind. Cas. 910=210 P. L. R 1910.** (50 P. R. 1896, *F.*; 15 A. 63, 72 P.R. 1899, *R.*)

(67)—*Suit on instalment bond, stamps for, to be calculated not on entire amount of bond but on amount actually sued for.*—Instalments not become due and payable under a bond, like instalments already accrued due and paid up, are not claimable, and, cannot be claimed in the plaint in a suit on the bond, and the stamp on such a plaint should be estimated not on the amount of the whole bond, but on the amount claimed in the suit. SUTTO BHAMA DOSSEEA v. JAMEERUDDY KHAN, **4 W.R.S. C.C. Ref. 12.**

(68)—*Khoti estate, Suit for recovery of—Stamp—Act* XXVI *of* 1867, *sch. B, art.* 11.—A Khoti estate is an estate paying revenue to Government upon which an assessment is temporarily settled, and a suit for its recovery, should, therefore, be assessed at eight times the annual assessment, under Act XXVI of 1867, sch. B, art. 11, note *(a)*, Sp. Rule 1, for the Bombay Presidency. *Ex parte* VITHAL *alias* GOPAL GANESH BIVALKAR, **4 B.H.C A.C. 148.**

(69)—*Suit to eject trustee — Possession — Valuation for jurisdiction—Specific Relief Act, s.* 42.—A suit for removing a trustee in possession, and for the appointment of plaintiff in his place, cannot be maintained without a prayer for possession of the properties and the value of the properties would determine the jurisdiction of the Court. SONACHALA v. MANIKA, **8 M. 516.** [*R.*, 19 A. 104=A.W N. (1896) 189; *D.*, 19 A. 60=A.W.N.1896, 187.]

(70)—*Suit for removal of a trustee—Valuation of.*—In suits in which the prayer is for the removal of trustee and not for the possession of property as a trustee, full stamp on the value of the trust property need not be filed and the plaintiff's value of the relief, if not *prima facie* unreasonable, cannot be questioned by the Court. BAWA MANGAL DAS v. MAHANT NARINJAN DAS, **56 P.R. 1895.** [*D.*, 128 P. R. 1903=65 P.L.R. 1903.]

(71)—*Suit to remove Karnavan—Jurisdiction—Valuation.*—A suit to remove a Karnavan of a Malabar Tarwad, is not a suit for the recovery of the tarwad property and to be valued as such, but a suit which asks for a relief that is incapable of valuation. NARANGOLI v. NARANGOLI. **4 M. 314** (4 M. 146, *F.*) [*Expl.*, 11 M. 266; *R.*, 14 M. 78.]

(72)—*Karnavan—Removal of—Court-fee.*—A claim for the removal of karnavan is incapable of valuation. It falls under s. 17, cl. IV, second schedule of the Court-fees Act. KARIYAT v. KARIYAT, **4 M. 146.** [*F.*, 4 M. 314; *D.*, 8 M. 516, 11 M. 266.]

(73)—*Suit for removal from office—Valuation.*—In a suit for the removal of a person from office, the subject-matter does not admit of valuation, and the Court-fee payable on its institution is Rs. 10. VEERASAMI PILLAI v. CHOKKAPPA MUDALIAR, **11 M. 149, note.**

(74)—*Valuation of suit—Mesne profits, suit for—Denial of plaintiff's title.*—In a suit for wasilat, the stamp on the plaint will be sufficient if it cover the amount claimed for wasilat, notwithstanding the defendant may deny the title of the plaintiff to the land. KADIR BUKSH v. WISE. **Marsh 165=1 Ind. Jur. O S. 103=1 Hay 370.**

(75)—*Mortgage—Suit by mortgagee against the heir of mortgagor—Realization of debt from security and other property in hands of heir—Valuation—Court-fees—Court Fees Act* (VII *of* 1870), *s.* 7.—A suit instituted by a mortgagee against the heir of the original mortgagor for the purpose of having the mortgage debt realised not only by sale of the mortgaged property, but also out of any other property in the hands of such heir which would be liable for the debts of the original mortgagor, should be valued, for purposes of Court-fees, not at the principal debt, but the entire amount including interest, the suit being virtually one for money. KASHINATH BALLAL v. GANPATRAO AMRITESHWAR JOSHI, **18 B. 696.** [*R.*, 7 Bom.L.R. 194.]

(76)—*S.* 7, *cl.* 9, *Act* VII *of* 1870 (*Court-Fees*)—*Suit for recovery of mortgaged property.*—In a suit for recovery of mortgaged property by a mortgagor against the mortgagee, the stamp will be payable on the amount mentioned in the bond, whatever may be the amount due to the mortgagee. KARAMAN SINGH v. NORMAN COCKELL, **1 C.W.N. 670.**

(77)—*Suit to establish right to mortgage bond—Valuation of suit—Jurisdiction.*—In execution of a decree for Rs. 647 against A, a mortgage bond for Rs. 2,000 executed in favour of the present plaintiff, A's father and guardian, by a third person, was attached. Attempts to raise the attachment having failed, the amount of the decree was deposited under protest, and the present suit was brought for the purpose of having it declared that A had no interest in the mortgage bond; and to recover the amount deposited in the Court. *Held* that the "subject-matter" of the suit for purposes of jurisdiction was the value of the decree under which the attachment took place, and not the value of the mortgage-bond. The suit was merely for a declaration of the plaintiff's ownership of the bond and thereupon to obtain its release from attachment improperly imposed at the instance of the defendant, the decree-holder, in execution of his decree for Rs. 647. The bond was in the possession of the plaintiff and all that

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he was interested in doing in the present suit was to protect it from sale. LACHMI NARAIN v. GULAB CHAND, **A.W.N. 1884, 114.**

(78)—*Suit to recover mortgage-deed owing to non-payment of mortgage-debt - Amount of debt —Valuation of claim for jurisdiction* —Suit for the recovery of certain mortgage-deeds on the ground that the amount of the deeds had not been paid. The defence was that it had been paid. *Held* that the real point in issue was not whether plaintiff was entitled to recover the documents, but whether the amount had been re-paid. The valuation of the suit for purposes of jurisdiction must accordingly depend upon the amount in contest. SALIG RAM v. DEWAN MAHOMED FAZL-ULLA-KHAN, **39 P. R. 1875.**

(79)—*Punjab Courts' Act* (XVIII *of* 1884), *s.* 3—*Valuation of suit—Jurisdiction—Suit by second mortgagee for possession against mortgagor and first mortgagee.*—A second mortgagee sued the mortgagor and the first mortgagee for possession of the property mortgaged on payment of the amount due to the first mortgagee. The valuation he fixed was the sum secured by his mortgage. *Held*, that the value of the suit for the purposes of jurisdiction under the Punjab Courts Act, 1884, with reference to the definition of "value" contained in s. 3 of the Act, was not necessarily identical with the value of the property to which the suit related, when it related to any property. Also since the redemption of the prior mortgage was included in the subject-matter of the suit for possession as mortgagee under the mortgage to the plaintiff, part of the consideration being the sum to be paid to redeem the prior mortgage, the redemption of which was a condition precedent to the plaintiff's right to possession under his mortgage, the value of the suit was therefore the value of the plaintiff's interest as mortgagee which cannot exceed the sum secured by the mortgage to him. HARNAM SINGH v. KIRPA RAM, **1 P. R 1887, F. B.** (20 P. R 1879, 82 P. R. 1882. *R*) [*F.*, 1 P. R. 1891, 42 P. R. 1901; *R.*, 44 P R. 1888, F.B., 51 P. R. 1890, 56 P.R. 1892, F.B., 132 P. R. 1893, 58 P. R. 1902, 19 P. R. 1903=129 P. L. R. 1903.]

(80)—*Mortgagee—Suit for possession—Value.* The value of a suit by a mortgagee for possession of the land mortgaged is the value of his interest as mortgagee and not the value of the land and the fact that he impleads other persons alleging them to be trespassers on such land does not affect the question of valuation. DHERU MALL v. THAKAR DAS, **1 P. R. 1891.**

(81)—*Mortgagee—Suit for possession—Rules under Suits Valuation Act—30 times land revenue.*—The value of a suit by mortgagee for possession is 30 times the land revenue according to the rules framed under Suits Valuation Act as to value of suits for possession of land under s. 7, cl. 5, of Court Fees Act.

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(Ruling in 1 P.R. 1887 is thus *overruled.*) RAM KISHEN v. SAYAD BHAHIM SHAH, **56 P.R. 1892, F.B.** [*R.*, 20 P.R. 1893; *Expl.*, 106 P.R. 1895, F.B.]

(82) — *Suit for possession of immoveable property by mortgagee against third person — Value of.*—The value of a suit for the possession of immoveable property by a mortgagee already in possession against a third person in actual possession of the same is the value of the immoveable property itself for the purposes of jurisdiction as the suit must be regarded as one for the possession of immoveable property. JALAL v. MUHAMMAD BAKHSH, **1 P.R. 1896, F.B.**

(83)—*Jurisdiction— Further appeal—Value of suit—Suit by a mortgagee for possession of land assessed to revenue.*—The value of a suit by a mortgagee for possession of the land assessed to Government revenue for purposes of jurisdiction is 30 years' revenue. No further appeal lies when such value is less than Rs. 250. ATMA RAM v. ATRA. **81 P.L.R. 1904.** 156 P.R. of 1892 F.B. *is not affected by* 24 P.R. 1903 (F.B.) s. c., 35 P.L.R. 1903, F.B.

(84)—*Jurisdiction--Valuation of suit--Proof of claim—Suit for possession and damages* —In a suit for possession and damages in a Subordinate Court no evidence was produced for proving damages. On appeal, the defendant appellant contended, (*a*) that the plaintiff purposely raised the real value of the suit in order to bring it within the cognizance of the Subordinate Judge; (*b*) that the claim for damages was merely a nominal claim intended to raise the value of the suit; and (*c*) that the amount of damages claimed should not be taken into account in determining the jurisdiction. The District Judge held, referring to 10 B.L R. 193, that the suit should have been instituted in the Munsif's Court. *Held* that the question of jurisdiction was one thing and the question as to whether the plaintiff failed to make out his case to the whole of the property claimed and the damages asked for another. The High Court observed that the District Judge was not warranted in drawing the inferences and accepting the plea as to jurisdiction. ASHRAF ALI v. MUHAMMAD HUSAIN, **A.W.N. 1883, 74.**

(85)—*Suit for possession after foreclosure—Valuation—Court Fees Act*, (870) *s.* 7, *cl.* 9.—Where a suit for possession is brought after a decree for foreclosure has been obtained, the valuation of such a suit, in so far as the jurisdiction of the Court is concerned, is not to be calculated according to the scale laid down in the Court Fees Act, s. 7, cl. 9. AHOLLYA BAI DEBIA v. SHAMA CHURN BOSE, **1 C.L.R. 473.**

(86)—*Suit for partition of share of joint family property—Valuation—Stamp.*—Where plaintiff sued for partition and possession of his share in joint family property, *held* that, for purposes of Court-fees, the plaintiff must pay an *ad valorem* duty on the value of his

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share sued for. BALVANT GANESH v. NANA CHINTAMON, **18 B. 209.** [*F.*, 28 A. 340=A.W.N. 1906, 38=3 A.L.J. 181, 4 L.B.R. 279, 9 M.L.T. 3=21 M.L.J. 21; *Appl.*, 22 B. 315; *Cons.*, 28 P.R. 1903=65 P.L.R. 1903; *R.*, 15 C.P.L.R. 120, 12 C.W.N. 37=6 C.L.J. 651.]

(87)—*Partition suit—Valuation for purpose of jurisdiction—Court-fees Act*, 1870, *s.* 7, *cl.* (*iv*) (*b*)—*Suits Valuation Act*, 1887, *s.* 8.—The value, for purposes of jurisdiction and of Court-fees, of a suit by a member of an undivided Hindu family for partition and delivery to him of his share of the joint family property, is the amount of the value of the plaintiff's share, and not that of the entire family property. VELU GOUNDAN v. KUMARAVELU GOUNDAN, **20 M. 289=7 M.L.J., 30.** [*Appr.*, 32 C. 734=9 C.W.N. 690; *R.*, 15 C.P.L.R. 120, 15 C.P.L.R. 81; *D.*, 12 C.W.N. 37=6 C.L.J. 651.]

(88)—*Partition suit—Valuation for purpose of jurisdiction.*—The value for the purposes of jurisdiction of a suit for partition is not the value of the entire property but the value of the share in respect of which partition is sought for. JAFAR HUSSEN v. ABDUL KADAR, **15 C.P.L.R. 81.** (17 C. 680, 20 M. 289, *F.*)

(89)—*Partition suit — Value of suit.*—In suits where the sole object of the plaintiff is to obtain a partition, the proper value of the suit is not the value of the property sought to be partitioned. Generally speaking, the value of the suit would be the difference between the value of the plaintiff's share which he requires to be partitioned and the value of the same not partitioned. KIRTEE CHUNDER MITTER v. ANNATH NATH DEB. **13 C.L.R. 253.**

(90)—*S.* 11, *Sub. s.* (2), *Act* VII *of* 1887—(*Suits Valuation*)—*Suit for partition—Under-valuation— Jurisdiction.*—If the under-valuation of a suit does not prejudicially affect its disposal, the defect of jurisdiction may be cured by s. 11 of the Suits Valuation Act, 1887. DINESH CHUNDER ROY v. SARNAMOYI DEBI, **1 C.W.N. 136.** [*Appl.*, 4 C.L.J. 509; *R.*, 35 P.R. 1901=47 P.L.R. 1901.]

(91)—*Suit for partition and exclusive possession of specific moieties of property*—Ad valorem *Court fee.*—A suit for partition and exclusive possession of specific moieties of property which is at the time of suit in the joint possession of the parties, is clearly not a suit for a mere declaration; it is similar to one for partition of joint family property and it is, therefore, chargeable with an *ad valorem* fee. REFERENCE UNDER COURT-FEES ACT, S. 5, **4 M.L.J. 110** (8 C. 757, 20 C. 764, *Not F.*) [*Diss.*, 6 C.L.J. 651=12 C.W.N. 37.

(92)—*Suit by co-sharer for partition of his share—Valuation of suit for jurisdiction.*—For the purposes of jurisdiction, the true test of the value of the "subject-matter" in a suit where one co-sharer sues for partition of his share of a joint estate, is the value of the share which is sought to be divided, and not the value of the entire joint property, BALLAH MAL v. BHUPA MAL, **110 P.R. 1888, F.B.** (8 P.R. 1887. *overruled*) [*R.*, 31 P. R. 1901=47 P.L.R. 1901, 37 P. R. 1901=57 P.L.R. 1901.]

(93)—*Jurisdiction—Suit for partition—Value of subject-matter.*—In a partition suit, the entire property to be divided is brought before the Court whose decree will deal with the whole, and, consequently, the suit is to be valued according to the value of the entire property to be partitioned and not according to the value of the plaintiff's share therein. GULZARI MAL v KANHYA LAL. **8 P.R. 1867,** (8 M. 235, *F.*) [*Overruled*, 110 P.R. 1888. F.B.]

(94)—*Court fees—Suit by co owner to establish right to shares in village lands—Amount of institution fee payable.*—Where a co-owner of village lands seeks to establish his right to certain shares in such lands, the stamp on the plaint need only be proportioned to the value of the property actually sued for. However much the plaint or the questions raised by the defence may affect the title of the co-owners in general, the valuation need not extend beyond the property in respect of which the plaintiff seeks a decree. VENKATASWAMI NAYAKKAN v. SUBBARAU, **2 M.H.C. 1.**

(95)—*Suit by one of several co-sharers—Valuation — Jurisdiction — Parties — Cause of action.*— In a suit brought by one of the share-holders to set aside the sale of the property held by several share-holders in which he made the other co-sharers defendants, but asked for possession of his own share, valuing the suit with reference to that share only and framing it so as to bring it in a Court in which he could not have brought a suit to set aside the sale of the entire property. *Held* that the plaintiff was not competent to sue in that way. The cause of action was the sale of the whole property, and the suit ought to have been framed and valued accordingly, and brought in such a Court that the rights of all parties interested in setting aside the sale might be declared in one suit. UNNODA PERSAD ROY v. ERSKINE, **12 B.L.R. 370=21 W.R. 68** [*R.*, 20 C. 746, 14 C.W.N. 128=2 Ind. Cas. 77=11 C.L.J. 35; *D.*, 4 A. 289=A.W.N. 1882, 36.]

(96)—*Suit valuation — Possession—Auction purchaser—Market value—Act* XXVI *of* 1867.—An auction-purchaser sued for possession of the property he had purchased. He valued the suit at the price he paid for the property at auction. *Held* that such valuation was *prima facie* correct though it can be rebutted by evidence. If the valuation was disputed or doubted the Court was at liberty to make an enquiry and fix the same. The decision of the Court with reference to such valuation was to be final. MUSSAMUT SOOBUDRA v. RAJA RAM PROKOSH SINGH, **16 W.R. 5.**

(97)—*Jurisdiction—Valuation of suit—Suit for possession and for demolition of building.*—In determining the question of jurisdiction in a suit for land and for the demolition of buildings

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standing thereon, the value of the buildings sought to be demolished should not be taken into account. MUHAMMAD JALALUDDIN v. ASAD ALI, **A.W.N. 1883, 89.**

(98)—*Suit for injunction to demolish obstruction to window—Valuation—Court fee.*—A suit for injunction against the defendant to remove an obstruction built by defendant against a window from which the plaintiff had an ancient right to light and air, is not one for a declaration of right, and the plaint must bear a Court-fee stamp proportionate to the value of the claim to be determined by ascertaining the difference between the value of the plaintiff's room if the window had not been blocked up and its value if it had been so blocked up. AMIR SHAH v. PANDIT PYARI LAL, **52 P.R. 1887.**

(99)—*Possession of land by demolition of house thereon or on payment of compensation for it—Valuation of suit for purposes of jurisdiction—Civil Courts Act (Oudh), s. 17.*—The defendant held some land of the plaintiff on rent and built a house upon it disregarding the latter's notice to him to quit the land. The plaintiff sued for the demolition of the building and the restoration of the land to him. He went on to say that, if for any reason the Court could not order the demolition of the building, a decree might be passed in his favour for possession on payment of compensation for the building. The building was found to be worth more than rupees one thousand; and the Munsif, in whose Court the suit was filed, held that the building was part of the subject matter of the suit, within the meaning of s. 17 of the Oudh Civil Courts Act, and returned the plaint for presentation to the proper Court, on the ground that the value of the subject-matter of the suit exceeded Rs. 1,000. *Held*, that the subject-matter of the suit was the value of the property which the plaintiff said he was entitled to take possession of (4 A. 320, 23 M. 84, *R.*) and that the case should be restored to the Munsif's file and disposed of according to law. SHAIKH NAWAB ALI v. DURGA, **11 O.C. 45.**

(100)—*Jurisdiction—Suit for removal of wall built on plaintiff's land — Value of subject-matter—Punjab Courts Act (XVIII of 1884), s. 40, cl. (a).*—In a suit for the removal of a wall built on plaintiff's land, the value of the subject-matter is simply the aggregate amount of the value of the wall and the strip of ground on which it was built. The value of the rest of the building which is not actually situate over the land claimed by plaintiff but which may be materially affected by the removal of the wall, is not to be considered in calculating the value of the suit. The damage likely to be caused to the building is scarcely a legal consequence 'directly' arising from the decree within the meaning of s. 40, cl. (*a*) of the Punjab Courts Act. DYA SINGH v. RALIA RAM, **26 P.R. 1887.** [*R.*, 52 P.R. 1887, 132 P.R. 1893.]

(101)—*Suit for removal of dam — Valuation of suit for jurisdiction.*—In a suit for the removal of certain dams erected by the defendants, *held* that, for the purposes of jurisdiction, the "subject-matter" of the suit was the right to have the ordinary flow of water which the plaintiffs contended used formerly to water their lands, unrestricted by the erection of the dams in question, and that the "value of the subject-matter" must, for jurisdictional purposes, be the depreciation caused to the plaintiff's lands by the interference with their free right to the water. SHAHBAZ KHAN v. DOSA KHAN, **163 P.R. 1888.**

(102)—*Jurisdiction—Valuation of suit—Suit for closing door-way.*—In a suit for closing a door-way the value of the subject-matter for purposes of jurisdiction would be the difference in the selling price of the plaintiff's premises before and after the door was opened. MULA MAL v. GURDIAL, **5 P.R. 1887.** [*R.*, 163 P. R. 1888.]

(103)—*Suit for possession of grove—Permanent buildings on grove.*—In a suit for joint possession of a garden, where the plaintiff asserts his proprietary right over the whole of the grove and all its incidents and advantages, the permanent buildings standing on the grove should also be taken into calculation in estimating the value of the property. NIHAL CHAND v. UDEY RAM, **A.W.N. 1886, 106.**

(104)—*Suit for declaration and possession—Stamp duty.*—In a suit for possession of a certain portion of land and for declaration of right in regard to the remainder, the stamp duty leviable on the plaint consists of the stamp payable on the value of the lands of which possession is asked, together with Rs. 10 being the Court fee leviable for the prayer for declaration. HURRO NATH BHUTTACHARJEE v. ROBERT HARVEY, **25 W.R. 23.**

(105)—*For purposes of jurisdiction—Declaratory suit by objector against decree-holder under s. 283, Civ. Pro. Code, 1882.*—In a suit under s. 283, Civ. Pro. Code, 1882, brought against the decree-holder for declaration that property is not liable to attachment, the value of the subject-matter of the suit for purposes of jurisdiction is the value of the decree which it is desired to execute, if that be less than the value of the property. MAHOMED AMEEN KHAN v. ABU ZAFFER KHORAISHI, **5 L. B. R. 23=2 Ind. Cas. 621.** (1 L.B.R. 1, *R.*)

(106)—*Possession and mesne profits, suit for*—S. 21, *Act* XII *of* 1887.—Where a suit is brought for possession and mesne profits, for the purposes of s. 21, Act XII of 1887, the valuation depends not only upon the value of the land but also upon the mesne profits recoverable. MOHINI MOHAN DAS v. SATIS CHANDRA ROY, **17 C 704.** [*R*, 31 C. 365=8 C.W.N 223, 11 C.W.N. 1133=6 C.L.J. 255=34 C. 954 (**F.B**).; *D.*, 21 C. 550.]

(107)—*Appeal, forum—Mesne profits—Interest—Suit, original, value of—Court Fees Act (VII of 1870), s. 11—Suits Valuation Act (VII of 1887), s. 8—Statute—Language of doubtful*

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import.—Where a plaintiff definitely fixes a certain sum as the amount of his claim, this is the value of the original suit, and the appeal lies accordingly: but when he fixes a certain sum as the amount of his claim, only approximately or tentatively, and prays that the amount of his claim may be ascertained in the course of the suit, the general rule is, that the amount found by the Court to be due to him is the value of the original suit for the purpose of determining the forum of appeal. *Per Curiam.*—When, in a suit for possession of land and mesne profits, which is originally valued at a sum below Rs. 5,000, and which is instituted in the Court of a Subordinate Judge, but in which the whole amount actually found due, inclusive of mesne profits payable by the defendant to the plaintiff, is over Rs. 5,000, an appeal lies to the High Court, and not to the District Court. (31 C. 365, *Appr.* and 8 C.W.N. 233, *Cons.*) In estimating the value of the original suit, the interest on the amount of mesne profits subsequent to the institution of the suit, is not to be taken into consideration. *Per Mookerjee, J.*—The value of the original suit means the value of the relief claimed in the original suit. The valuation of a suit as made by the plaintiff may by either definite or approximate. In the latter case, the relief claimed is tentative, and not final, and such approximate valuation does not determine the forum of appeal. The Court makes an investigation and determines the amount which the plaintiff is entitled to recover. When the plaintiff upon such adjudication accepts the amount determined by the Court, the value of the relief obtained by him, which is in substance also the relief claimed by him, is the value finally determined. In such a case, if the defendant prefers an appeal, he is entitled to proceed on the assumption, that the real value of the original suit is the value as adjudged by the Court and accepted by the plaintiff. If such value exceeds Rs. 5,000, the appeal lies to the High Court. (17 C. 704, 6 C. W. N. 346, 23 C. 536, *Appr.*) The forum of appeal depends, not merely upon the value as adjudged, but upon the value as accepted by the plaintiff after adjudication. (21 C. 550, *R. and doubted*; 16 A. 286, *Disc.*) When the plaintiff accepts the decree for the amount of mesne profits found and allowed by the first Court, the original valuation made in the plaint, which was approximate and tentative, is altered, and the valuation as determined by the first Court becomes the plaintiff's valuation. Where the plaintiff asked for past as well as future mesne profits, and paid Court-fees on the amount claimed for past mesne profits only, the provisions of s. 11 of the Court Fees Act were applicable in respect of the whole suit. (33 C. 1232, *Appr.*; 15 B. 416, *Diss.*) Under s. 8 of the Suits Valuation Act, the value of the suit upon which the Court-fee has been assessed and paid without objection, is the value for the purposes of jurisdiction. Where a statute uses language of doubtful import, and has been interpreted in a particular manner for a number of years, the interpretation given to that obscure meaning may reduce the uncertainly to a fixed rule. IJJATULLA BHUIYAN v. CHANDRA MOHAN BANERJI, **6 C L.J. 255, F.B. = 11 C.W N. 1133 = 34 C. 954.** [*R.*, 13 C.W.N. 493 = 9 C.L.J. 367 = 5 M.L.T. 360.]

(108)—*Suit for pre-emption— Valuation of suit.*—In a suit for pre-emption, the valuation of the property sued for is to be calculated at the market value for which it would sell, and not at ten times the value of the sudder *jumma.* ANJUD SINGH v. DEPUN SINGH, **3 B.L.R. App. 143 = 14 W.R. 230, Note.** [*F.*, 14 W.R. 220; *D.*, 6 O.C. 255.]

(109)—*Suit for pre-emption, valuation of—Bengal Civil Courts Act* (VI *of* 1871), *s.* 20.—In a pre-emption suit, the subject-matter is the right of pre-emption, the value of which, and not that of the property itself, determined the question of jurisdiction under s. 20 of the Bengal Civil Courts Act. NAUN SINGH v. RASH BEHARI SINGH, **13 C. 255.**

(110)—*Suit for pre-emption—Valuation for purposes of jurisdiction—Market value.*—A pre-emption suit must be valued according to the market value of the property in respect of which the right is claimed, for the purpose of determining whether the suit falls within the pecuniary limits of the jurisdiction of a particular Court. NANAK CHAND v. SAIN DITTA, **54 P.R. 1878, F.B.** (62 P.R. 1875, *Overruled*). [*R.*, 82 P.R. 1882.]

(111)—*Jurisdiction—Value of suit stated in plaint—Pre-emption suit.*—*Held*, that in pre-emption suits when the market value of property in dispute determined by Court is not what is stated in the plaint, the sound rule is that ordinarily and in the absence of any special circumstances suggestive of mala fides on the part of the plaintiff, the value for the purposes of jurisdiction must be determined with reference to the claim *made and not to the decision upon that claim though it is* not a hard and fast rule but one subject to exceptions and qualifications in particular cases. IMAM DIN v. GHULAM MUHAMMAD, **P.L.R. 1900, 538.**

(112)—*Jurisdiction—Suit for pre-emption—Value of suit—Value of property—Claim for compensation by defendant.*—*Held*, that in a suit for possession, by right of pre-emption, the value of the suit for purposes of jurisdiction is the value of the property which it is sought to pre-empt. It must, ordinarily and in the absence of special circumstances suggestive of *mala fides* on the part of the plaintiff, be determined with reference to the claim made, and not the defence set up by the defendant. *Held*, further, that the value of the suit is not affected, because the defendant claims on equitable grounds that compensation for improvements be paid to him before the plaintiff can take possession. DHARAM CHAND v. GIRDHARI LAL, **38 P.L.R. 1902.**

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(113)—*Act* XVIII *of* 1884 (*Punjab Courts Act as amended*), *s.* 39—*Appeal—Valuation of suit—Pre-emption suit—Transfer of appeal.*—In a suit for possession of land by right of pre-emption, in ascertaining the value for purposes of jurisdiction, the Court has to look in the first place to the amount calculated on the basis of thirty times the revenue, and, in the second place, to the amount on the payment of which the pre-emptor is entitled under the decree to obtain possession of the land. *Held*, that an appeal by a pre-emptor, against a decree dismissing his suit, for pre-emption of revenue-paying land sold for more than Rs. 5,000, does not lie to the Chief Court; for, the course of appeal in the first instance is determined by the value of land, calculated on the basis of thirty times the revenue. In such case if the appeal is filed directly in the Chief Court, the Court will decline to order its transfer to its own file. KIRPA RAM v. HIRA NAND, **215 P.L.R. 1908.** (16 P.R. 1908, F.B. =146 P.L.R. 1908, 46 P.R. 1908=172 P.L.R. 1908, *R.*)

(114)—*Suit for possession of land—Definite portion of revenue paying Khata—Value for purposes of jurisdiction—Jurisdiction of Court to pass decree for pre-emption when the sum payable exceeds the Court's pecuniary jurisdiction.*—In a suit for the possession of land, where the subject matter of the suit is a certain portion of a khata separately assessed to revenue, the value for the purpose of jurisdiction is 30 times such portion of the revenue of the part as may be rateably payable in respect of that part. A Court has no jurisdiction to pass a decree for pre-emption where the sum payable exceeds the limits of the Court's pecuniary jurisdiction. FATA v. KHAN BAHADUR, **46 P. R. 1908=94 P.W R. 1908=172 P.L.R. 1908.** (16 P.R. 1908, F.B., *F.*)

(115)—*Value of subject-matter of suit for pre-emption--Pre-emption, suit for--Forum of appeal, when valuation by plaintiff determines the question of—Appeal--Jurisdiction--Civil Courts Act, s.* 18.—In a suit for pre-emption the plaintiff alleged in his plaint that the value of the share which he claimed was Rs. 4,556. The Subordinate Judge decided that the true value was above Rs. 5,000. The defendant appealed to the Court of the Judicial Commissioner. The plaintiff contended that under s. 18 of the Civil Courts Act, the appeal should have been filed in the Court of the District Judge because the value of the suit did not exceed Rs. 5,000 and he further contended that in a suit for pre-emption the subject-matter is the right of pre-emption the value of which, and not that of the property itself, determines the question of jurisdiction. *Held*, that the value of the subject-matter of this suit was the value of the property claimed. The plaintiff's valuation determines the forum except in cases where it is proved that the plaintiff has misrepresented the true value with the intention of getting a trial in a different Court from that intended by the Legislature, or has acted recklessly in

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valuing his suit, or has adopted a wrong method of valuation. *Held*, that having regard to the circumstances of the suit the general rule must prevail, that the valuation of the plaintiff should have been accepted as governing the question of the forum of appeal and the appeal should have been filed in the Court of District Judge. THAKUR SHEO DAT SINGH v. THAKUR BISHUNATH SINGH, **6 O.C. 255.** [*R.*, 12 O.C. 31.]

(116)—*Jurisdiction — Suit for a fractional share of land assessed to land revenue—Claim for specific performance of agreement—Court Fees Act*, 1870, *s.* 7 (*x*)—*Illegal agreement.*—The plaintiffs claimed 3/11 share of two plots of land on the allegation that the parties to the suit agreed to buy them in partnership at an auction and they were so purchased in the names of the defendants. *Held*, that the suit did not fall within s. 7 (*x*) of the Court Fees Act, and that it was not unmaintainable because the plaintiffs had not paid their share of the price for the land purchased. *Held*, that for purposes of jurisdiction the suit was properly valued calculating the value of the share claimed at thirty times the land revenue assessed. *Held*, further, that an agreement between two persons not to bid against each other at an auction is not necessarily illegal. NANDA SINGH v. SUNDAR SINGH, **97 P.L.R. 1901= 37 P.R. 1901.** (18 B. 342, 16 C. 194, 13 C.L.R. 1, *R.*)

(117)—*Jurisdiction—Valuation of suit—Set-off—Civ. Pro. Code*, 1882, *s.* 111.—Where in a suit for damages, a set-off is claimed, the value of the subject-matter of the suit should not be calculated by adding together both the claim and the set off, but should be calculated solely on the value of the suit as instituted by the plaintiff; and if both the suit and the set-off are within the pecuniary jurisdiction of a Court, it can, as provided by s. 111 of the Civ. Pro. Code, adjudicate upon both cases, though their combined value is beyond its pecuniary jurisdiction. JIT SINGH v. MUTU SHAH, **69 P.R. 1889.**

(118)—*Administration suit — Valuation — Computation of Court-fee—Valuation for purposes of jurisdiction—Court-fees Act, s.* 7 — (iv) (*f*)—*Suits Valuation Act, s.* 8—*Lower Burma Courts Act, ss.* 2 (*h*), 25, 28.—In an administration suit the Court-fee on the plaint should be computed *ad valorem* on the estimated value of the share claimed by the plaintiff, under s. 7 (iv) (*f*) of the Court Fees Act; the value for purposes of jurisdiction is the same, under s. 8 of the Suits Valuation Act, 1887. The Court to which the appeal lies is determined by the value of the suit (*i.e.*, the share claimed by the plaintiff) under s. 28 of the Lower Burma Courts Act, 1900. MA MA v. MA HMON. **4 L.B.R., 279.** (17 C. 680, *Diss.*; 18 B. 209, *F.*; 7 B. 125, 7 B. 535, *Cited and F.*; 12 A. 506, *R.*)

(119)—*Mortgage — Suit for redemption—Valuation of suit—Jurisdiction.*—In a suit for

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redemption, the value of the subject-matter for purposes of jurisdiction is not the market value of the land but the amount of the mortgage money. KUBAIRSINGH v. ATMA RAM, **5 A. 332=A.W.N. 1883, 47.** [*F.*, 5 A.L.J. 713 =A.W.N. 1908, 276=31 A. 44=1 Ind. Cas. 703; *R.*, 14 C.P.L.R. 154.]

(120)—*Jurisdiction—Subject-matter of the suit—Mortgage—Redemption.—Held*, that the value of the subject-matter of a suit in a case of redemption of mortgage for the purposes of jurisdiction is the amount of the charge upon the property as stated in the plaint and not the value of the property. KISHEN SINGH v. SAHABUD DIN, **P.L.R. 1900, p. 362.**

(121)—*Suit by mortgagee for declaration that mortgage is subsisting, after the disallowing of his claim to attach mortgaged property—Civ. Pro. Code*, 1882.—For jurisdiction purposes, it is not necessary that valuation of a suit, to declare that mortgage is subsisting, launched by a mortgagee subsequent to the disallowing of his claim to attach the mortgaged property, must be on the amount of attachment. FISHER v. ARUNACHALAM CHETTIAR, **8 M. L.T. 70=19 M.L.J. 236=2 Ind. Cas. 522.** (30 M. 335, *D.*)

(122)—*Jurisdiction—Madras Civil Court's Act*, ss. 12, 14—*Court Fees Act*, s. 7, *cl.* 9—*Mortgage—Redemption — Value of improvements not secured.*—If the instrument of mortgage does not expressly secure the value to be allowed for improvements on redemption, the amount of such improvements cannot be taken into account in ascertaining the value of subject-matter of suit for the purpose of jurisdiction. (*Turner, C.J.*, and *Muthusami Ayyar, J.*, *Diss*) *Per Turner, C.J.*, and *Muthusawmi Ayyar, J.*—The provisions regulating jurisdiction in suits for the redemption of mortgage are different from those relating to suit for the possession of land, and in the former the subject-matter is the charge and not the land. Although the value of improvements cannot be ascertained at the time the mortgage (kanam) is made, if by custom the mortgagor has to pay it before he can redeem monies laid out on improvements are secured as much as the principal monies, and the valuation of the suit for redemption must, for the purpose of jurisdiction, include the value of improvements. ZAMORIN OF CALICUT v. NARAYANA, **5 M. 284, F.B.** [*R.*, 14 C.P.L.R. 154.]

(123)—*Suit for redemption of mortgage—Valuation of suit—Jurisdiction.*—In a suit for redemption of a mortgage by one of several co-mortgagors, who is enabled to maintain such suit in consequence of the integrity of the mortgage having been broken up by the act of the mortgagee, the jurisdiction of the Court must be decided with reference to the amount the plaintiff will have to pay as regards his share of the property, including any amount which may have been tacked on to the mortgage. BAHADUR v. NAWAB JAN, **3 A. 822=A.W.N. 1881, 85.** (2 A. 778, *F.*) [*R.*, 11 B. 591, 14 C.P.L.R. 154.]

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(124)—*Value of suit for purposes of jurisdiction—Redemption suit.*—In a redemption suit the subject-matter is the charge and not the land mortgaged; the amount of principal secured constitutes the value of the suit for the purposes of jurisdiction. DEOSTHAN OF SONEGAON v. MUKUNDA, **14 C. P. L. R. 154.** (5 M. 284, 16 M. 326, 328, *F.*)

(125)—*Suit for redemption—Denial of mortgage—Valuation of suit—Dekhan Agriculturists Relief Act* (XVII *of* 1879), *chap.* II, *s.* 3—*Applicability—Jurisdiction—Appeal.*—In a suit for redemption, the valuation of the subject-matter does not depend on the value of the mortgaged property. Where the mortgage itself is denied and the mortgagee does not say what he claims in respect of the mortgage debt, the amount found to be remaining due on the mortgage, if any amount was due at the time when the suit was filed, would represent the true valuation of the subject-matter of the suit. The plaintiffs, who were agriculturists, instituted a suit to redeem certain property, alleging that it had been mortgaged to the defendant's father (deceased) for Rs. 50, and that the debt had been paid up out of the rents and profits arising from the mortgaged property. The defendants denied the alleged mortgage and contended that they had been in possession as owners for more than 50 years. The first Court found that the mortgage was proved and that the debt had been more than paid off out of the profits of the property. It also *held* that, as the value of the property exceeded Rs. 100, chap. II of the Dekhan Agriculturists Relief Act (XVII of 1879) did not apply to the case, and gave a decree awarding possession to the plaintiffs. On appeal to the District Court, the District Judge reversed the decree, being of opinion that the mortgage set up was not proved. The plaintiff preferred a second appeal to the High Court. *Held* that, as the Court of first instance found that no sum remained due, and as the original advance was only Rs. 50, the provisions of chap. II of the Dekhan Agriculturists Relief Act (XVII of 1879) were applicable to the case, and that no appeal lay to the District Court from the decision of the Court of first instance. AMRITA BIN BABUJI v. NARU BIN GOPALJI SHAMJI, **13 B. 489** [*R.*, 16 B. 183, 2 Ind. Cas. 677, 5 L.B.R. 208.]

(126)—*Suit for redemption of mortgage, amount of mortgage determines jurisdiction for—Mortgages*—Gahan lahan *clauses of conditional sale whether affect right to redeem—Several mortgagees—One suit for redemption—Dekhan Agriculturists Relief Act* XVII *of* 1879, *s.* 13, *construction.*—In this suit brought to redeem two mortgages for Rs. 1,250 and Rs. 3,000, objection was taken on first appeal that the District Judge had no jurisdiction to entertain the appeal, as the value of subject-matter of the suit calculating it as the amounts remaining due on the mortgages, was over Rs. 13,000, and that the Court of the Second-class Subordinate Judge had had no jurisdiction in the original suit before him; but it was held that, for th

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purpose of determining the value of the subject-matter of a suit for redemption, it is the amount of the mortgage the rights connected with which are the subject of contention in the suit, that must be taken as the basis, and that therefore the objection as to jurisdiction was untenable. [*R.*, 14 C.P.L.R. 154]. The plaintiff's right to redeem was denied by the defendant who alleged that, by virtue of the *gahan lahan* clauses contained in the mortgages, the mortgaged lands had become his absolute property, but the lower Court had rightly recognised the plaintiff's right to redeem in spite of the *gahan lahan* clauses, the ruling in 1 B.H.C. 199, laying down that *gahan lahan* clauses are themselves of no avail, being in force in the Presidency of Bombay with regard to mortgages with conditional sale clauses [*F.*, 14 B. 78; *Appr.*, 6 Bom. L.R 38; *R.*, U B.R. 1897—1901, Vol. II, 502.] Another objection raised in this case, against the account of the two mortgages being taken as one, was upheld. The mortgages were perfectly distinct transactions relating to different lands, and there is nothing in s. 13 of the Dekhan Agriculturists Relief Act of 1879, which could be taken as enabling the Court to treat the mortgages as one. The mere fact of their having been included in the same suit for redemption could not affect the question. RAMACHANDRA BABA SATHI v. JANARDAN APAJI, **14 B. 19.** [*F.*, 34 B. 260 L.R. 137.]

(127)—*Suit for redemption of mortgage—Valuation for purposes of jurisdiction.*—In a suit for redemption of mortgage, the jurisdiction of the Court must be decided with reference to the subject-matter in dispute, that is, the mortgage and the mortgagee's rights under it, in other words, the amount expressed to by secured by the instrument of mortgage, and not the value of the property mortgaged. The defence set up has nothing to do with such a question. GOBIND SINGH v. KALLU, **2 A. 778** (S. A. No. 1039 of 1877, *Diss.*) [*F.*, 3 A. 822 = 1 A.W.N. 85, 7 A.W.N. 262, 10 A. 524, 13 B. 489; *R.*, 11 B. 591, 14 C. P. L. R. 154]

(128)—*Mortgage—Suit for redemption—Valuation of suit for jurisdiction*—Where a mortgagor of immoveable property sues for possession of it from the mortgagee by redeeming the mortgage, the value of the subject-matter of the suit for purposes of jurisdiction is the amount of the charge on the property and not the value of the property. As a suit must be valued in the first instance at least upon the plaint, before any answer by the defendant, the amount alleged in the plaint to be due on the mortgage is *prima facie* the value of such suit, and even if it turns out that the amount is understated, this would hardly be a fatal variation, and provided the mortgage is found to be proved and the amount found to be actually due does not exceed the pecuniary limit of the Court's jurisdiction, a decree for redemption may properly be made. MUSSAMMAT RAJO v. DASU, **44 P.R. 1888, F.B.** [*F.*, 1900 P. L. R. p. 362, 122 P.R. 1912; *R.*, 169 P.R. 1888, 98 P.R. 1889, 132 P.R. 1893, 106 P. R. 1895, 73 P. R 1899, 16 P. R. 1908, F.B. = 146 P L.R. 1908, 19 P.R. 1908, F.B. = 146 P. L. R. 1908.]

(129)—*Suit for redemption of mortgage—Relief of possession of mortgaged property—Valuation for jurisdiction according to value of property.*—In suits for redemption of mortgage, where the plaintiff seeks to be put in possession of the mortgaged property upon payment of the mortgage-money or such part of it as may be found to remain due, the suit is essentially a suit for possession of property, the subject-matter of the suit is the property itself, and it should be valued, for jurisdiction purposes according to the value of the property. The character of the suit, as one for possession, is not altered by the nature of the pleas which the defendant may set up as an answer to the suit, whether they are pleas calling in question the proprietary title of the plaintiff, or merely disputing the amount of the mortgage charge, or taking objection on some other ground. The subject of the suit is the property itself, and the object of the suit is to recover possession of it. MUSST. BAKHT BHARI v. RAHIM SHAH, **82 P.R. 1882.** [*F.*, 185 P.R. 1882; *R.*, 1 P.R. 1887.]

(130)—*Mortgage — Suit for redemption—Valuation of suit, how determined—Effect of defendant's plea that a larger sum than that alleged in plaint, is due—Further appeal—Punjab Court's Act* (XVIII *of* 1884), *s.* 40, *cl.* (*a*).—In a suit for redemption of a mortgage on payment of Rs. 300, in which the defendant pleaded that the amount of the mortgage debt was Rs. 3,000, both the lower Courts found that only Rs. 300 were due and decreed redemption on payment of that sum The question was raised whether the defendant was entitled to prefer a further appeal to the Chief Court as of right, on the ground that by his plea that the mortgage debt was Rs. 3,000, the value of the suit exceeded Rs. 500. *Held* that the value of the suit was only Rs. 300, and was not altered by the plea of the defendant, whether that plea be true or false; that the decree for redemption on payment of Rs. 300 involved only indirectly and not directly a question respecting property exceeding Rs. 500 in value, and that therefore, an appeal of right did not lie under cl. (*a*) of s. 40 of the Punjab Courts Act. BHAG MAL v. MOHRA, **169 P.R. 1888.** [*F*, 91 P.R. 1889, 1900 P.L.R. p. 362; *Appl.*, 46 P.R. 1906 = 94 P.L.R. 1906; *R.*, 63 P R. 1891, 145 P.R. 1892, 106 P.R. 1895, 73 P.R. 1899, 24 P.R. 1903, F.B. = 35 P.L.R. 1903, 58 P.R 1902, 16 P.R. 1908, F.B. = 146 P.L R. 1908, 122 P.W.R. 1912 = 14 Ind. Cas. 1908; *D*, 23 P.R. 1909 = 197 P.L.R. 1908 = 37 P.W. R. 1909 = 1 Ind. Cas. 870.]

(131)—*Madras Civil Courts Act—Jurisdictional value of suit with two causes of action.*—In a suit for the redemption of a kanom and also for recovery of certain arrears of rent, there being two distinct causes of action in the suit,

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the value of the subject-matter of the suit for the purposes of jurisdiction must be taken to be the aggregate value of the two heads of relief. KONNA PANIKKAR v. KARUNAKARA, **16 M. 328.** [*R.*, 7 O.C. 152 ; *D.*, 19 M. 16.]

(132)—*Valuation of claim, error in—Effect —Civ. Pro. Code*, 1859, *s.* 350.—Errors in the valuation of claims are not errors, defects, or irregularities which affect the merits of the case, and when such errors, real or supposed, do not affect the jurisdiction of the Court which originally tries the case, the appellate Court is restrained, by s. 350 of the Civ. Pro. Code, from ordering the reversal of a decree on account of such errors. NAVASA BIBA v. RABA BAHIRU, **1 B.H.C. 163.** [*R.*, 11 W.R. 257.]

(133)—*Over-valuation of suit — Effect.* — A *bona fide* over-valuation of a suit and its consequent trial in a Court of a higher grade would not, when the venue of appeal is not affected thereby, be a valid ground for the reversal of the first Court's decree on appeal. RAJENDRA LALL GOSSAMI v. SHAMA CHURN LAHORI, **5 C. 188=4 C.L.R. 417.** [*R.*, 8 C. 757 ; 12 C.W.N. 37=6 C.L.J. 651.]

(134)—*S.* 283, *Civ.Pro.Code.—Suit by attaching creditor to declare his right to attach against successful claimant—Jurisdiction of Court, how determined.*—On a claim having been allowed, the attaching creditor brought a suit against the successful claimant for the establishment of his right to bring the attached property to sale in execution of his decree. Though the decree was for a sum much below Rs. 1,000, the value of the property attached exceeded that sum. The Munsif returned the plaint for presentation to the proper Court on the ground that the value of suit was beyond his jurisdiction. *Held* the Court had jurisdiction to try the suit since the decree was for a sum less than Rs. 1,000, the jurisdictional limit of the Court. The general rule applicable to a suit, in which the sole question to be determined is whether the property attached is or is not liable to be attached and sold in execution of a decree, is that when the amount of the decree exceeds the value of the property sought to be sold, the latter is the value of the suit, but when the value of the property attached exceeds the amount sought to be realized, the value of the suit is the value of so much of the property sought to be sold, as will, on sale, satisfy the amount sought to be realised by sale of such property. DHAN DEVI v. ZAMURAD BEGAM, **2 A.L.J. 115=A.W.N. 1905. 37=27 A. 440.** (17 A. 69, *Expl.*) [*R.*, 2 N.L.R. 87, 30 M. 335= 17 M.L.J. 95=2 M.L.T. 116, F.B.]

(135)—*Court Fees Act*, VII *of* 1870—*Suit to set aside auction sale—Court fees.*— When the plaintiff specifically asks to have an auction sale of property set aside, the plaint must be stamped as one for the recovery of the property DRAPU CHOWDHRY v. ISHAN CHUNDER DASS, **9 C.L.R. 231.**

(136)— *Suit relating to share of land—Valuation for purposes of stamp duty, rental of the share of the basis for.*—In the case of a suit with regard to a share of land, for the purpose of the valuation of the suit for ascertaining the stamp payable for it, the rental of the share in contest should be taken as the criterion. RAM BUKSH THAKOOR v. AJOODHYA LAL, **2 W.R. Mis. 45.**

(137)—*Act* XXIII *of* 1863, *s.* 5, *suit under—Waste land—Stamp.*—The plaint in a suit under s. 5, Act XXIII of 1863, by a claimant to waste land proposed to be sold or otherwise dealt with on account of Government, or by an objector to the sale or other disposition of such land, ought to be on a stamp paper of the value of Rs. 100. GREESH CHUNDER ROY v. COLLECTOR OF SYLHET, **7 W.R. 349.**

(138)—*Muhammadan Law—Claim for distributive share under Rs.* 5,000—*Appeal to District Court.*—In a suit by certain members of a Moplah family to recover their distributive share under the Muhammadan Law, the value of the share claimed is the value of the subject-matter of the suit, and not the value of the property from which the share has to be set out as in a general partition in a Hindu family, and the appeal in such a case would lie to the District Court, where the value of the share is under Rs. 5,000. KUNHIKUTTI v. ACHOTTI, **14 M. 462.** [*R.*, 6 C.L.J. 38.]

(139)—*Review for costs — Court fees on value of whole suit, necessity of—Court Fees Act* (VII *of* 1870), *sch. I, art.* 5.—Having regards to the language of art. 5 of the Act, a petition for review must be stamped according to the value of the whole suit, and not merely upon the value of the relief sought by the petition. NOBIN CHUNDER CHUCKERBUTTY v. MAHOMED UZIR ALI SARKAR, **3 C.W.N. 292.** (4 B. 26, 7 M.H.C. App. 1, *D.*) [*F.*, 31 A. 294=6 A.L.J. 215.]

(140)—*Pecuniary jurisdiction of Court original or appellate — Plaintiff's valuation — Amount decreed—Civil Courts Act (XII of* 1887).—For the purposes of determining the proper appellate Court in a suit, it is the value of the original suit as assigned by the plaintiff in his plaint that must be taken into consideration and not the value as found by the Court. The jurisdiction to hear a suit and make a decree or to hear an appeal and make a decree in appeal, must be determined by the value assigned in the plaint, otherwise there would be no certainty as to the Court in which a suit or an appeal should be brought. So, it is the plaintiff's valuation in his plaint that must control the jurisdiction, not only of the first Court, but also of the appellate Court, and not the amount which may be found and decreed by the first Court or by the appellate Court. MADHO DAS v. RAMJI PATAK, **16 A. 286=A.W.N. 1894, 84.** (13 A. 320, *R.*) [*R.*, 17 A. 69, 18 A.W.N. 74, 2 O.C. 103, 6 O.C. 255, 28 A. 545=A.W.N. 1906, 99=3 A.L.J. 266, F.B., A.W.N. 1906, 195=3 A.L.J. 511, 34 C. 954=11 C.W.N. 1133=6 C.L.J. 255.]

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(141)—*Objection to jurisdiction—When may be raised—Second appeal.*—Where a suit instituted in a Munsif's Court on a right of pre-emption came up a second time to the High Court in special appeal, and the defendant (without objecting to the jurisdiction on the ground of valuation of the suit in all the earlier proceedings and without raising the ground in the petition of appeal), raised the objection for the first time that the suit was not cognizable by the Munsif, *held* that the objection must be allowed, though taken at such a late stage of the case, because the defendant was not at liberty to waive jurisdiction. Accordingly, the decree of the Munsif was reversed and set aside as having been passed without jurisdiction and consequently having no legal effect. NAUNHOO SINGH v. TOFAN SINGH, **14 W.R. 228.** (3 B.L.R. App. 143, *F.*) [*R.*, 6 O.C. 255.]

(142)—*Appellate Court, duty of—Court Fees Act* (VII *of* 1870), *s.* 12 (*cl.* 2).—An appellate Court would be justified in calling upon the plaintiff to pay the additional fee payable upon his insufficiently stamped plaint, though a decision had been given by the original Court on the merits, no objection on the point having been taken either by the defendant or the Court at the original hearing. SHAMA SOONDARY v. HURRO SOONDARY, **7 C. 348=8 C.L.R. 528.** (22 W.R. 433, *D.*) [*R.*, 12 A. 129; *D.*, 15 M. 288.]

(143)—*Appeal—Jurisdiction—Bengal, N W. P. and Assam Civil Courts Act* (XII *of* 1887), *s.* 21.—Plaintiff sued for an account and valued the suit at Rs. 2,000, but added that if any further sum were found due he would pay the additional Court fee. A preliminary decree was passed directing the defendant to render accounts. On defendant's failure to account, plaintiff filed an account claiming that Rs. 11,000 was due and prayed for a decree for that amount. Plaintiff subsequently reduced the amount to Rs. 9,000. Defendant, thereupon, objected, and on an account being taken plaintiff's suit was dismissed and he preferred an appeal to the District Judge valuing his appeal at Rs. 4,500. The District Judge *held* that the appeal did not lie to him as the value of the suit was Rs. 9,000 and not Rs. 2,000. *Held* that the appeal lay to the District Judge as the value of the suit must be considered as that stated in the plaint (Rs. 2,000). NAGENDRA NATH MOZUMDAR v. RUSSIK CHANDRA RAI, **6 C.W.N. 346.** [*Appr.*, 34 C 954, F B.= 11 C.W N. 1133=6 C.L.J. 255; *D.*, 8 C.W.N. 233=31 C. 365.]

(144)—*Valuation of suit — Jurisdiction — Appeal.*—Plaintiff had stamped his plaint with stamps to cover a value of Rs. 105. The decree was against him. He appealed to the District Judge, and valued his appeal at Rs. 105. The plaintiff had stated in the course of the hearing that he had purchased the property in question (which was growing crops) for Rs. 75. The Judge assumed that he should have valued his suit at Rs. 75, and dismissed the appeal. *Held*, on revision by the High Court, it did not follow that property which was purchased for Rs. 75 was not worth Rs. 105 or a great deal more, and that the Judge was bound to take the valuation put by the plaintiff on his suit as indicated by the stamp, in the absence of any fraud. (11 A.W.N. 107, *R.*) And it was also held on the authority of the ruling in 11 A.W. N. 96, that an application in revision was the proper remedy in this case. MUHAMMAD ABDUL KADIR v. HUSAIN KHAN, **A.W.N. 1894, 55.**

(145)—*Act* XVI *of* 1868, *s.* 18—*Value of subject-matter of suit below Rs.* 5,000—*Question raised in appeal exceeding that sum—Appeal—Zillah Judge.*—The plaintiffs claimed a share in the estate of a deceased Mahomedan, amounting to Rs. 1,700 in value; the defendant pleaded that the widow was entitled to a dower of Rs. 10,000 which exhausted the estate. The Court of first instance held the plea proved, and dismissed the suit, and an appeal was made to the Zillah Judge. *Held* on special appeal that the Zillah Judge was competent to hear the appeal, for although the question raised by the appeal related to a sum exceeding in amount Rs. 5,000, yet no decree could have been passed for a larger sum than was claimed by the plaintiffs. MUSSUMAT MASOOMA BEBEE v. MUSSUMAT NAZUR FATMA, **1 N. W.P. 203.** [*D.*, 3 N.W.P. 114.]

(146)—*Act* XXI *of* 1863, *ss.* 27, 39—*Appeal—Value of suit—Value of decree.*—Where an administration suit has been laid at over Rs. 10,000, and the value of the whole amount decreed by the Recorder of Moulmein is below that sum, *held* that, upon a fair construction of ss. 27 and 39 of Act XXI of 1863, the appeal lies in the first instance to the High Court, and not to the Privy Council. HAWABI v. IBRAHIM SALI BHAY DAPTI, **5 B.L.R. 305.**

(147)—*Suit for Rs.* 43 *and odd—Claim as owner of property worth more than Rs* 500—*Right of appeal—Punjab Courts Act* (XVIII *of* 1884), *s.* 40 (*a*).—Where the plaintiff was awarded a decree for Rs. 42 and odd for his share of the offerings of a temple by virtue of his being the owner of property worth more than Rs. 500 in value, it cannot be said that his claim involved directly a claim or question respecting property exceeding Rs. 500 in value, so as to give him a right of appeal under s. 40, cl. (*a*), of the Punjab Courts Act, XVIII of 1884. GOPAL SINGH v. TIRKHA RAM, **96 P.R. 1887.**

(148)—*District Judge—Act* XIX *of* 1841—*Power to delegate.*—A District Judge has no power to delegate his authority to a Subordinate Court to enquire into an application under Act XIX of 1841. GANPAT v. MUSSAMMAT MANKOUR, **203 P.R. 1889.**

See ACCOUNTS—SUIT FOR ACCOUNTS, **12 B. 675, 25 M. 243=12 M.L.J. 35.**

Valuation of Suits—*continued.*

See ACT XXVI OF 1867, sch. B, 3 M.H.C. 352.

Suit for partition—Basis of valuation—Value of property—Appeal to which Court to lie—*See* ACT XII OF 1887, s. 21, 3 C.L.J. 197=10 C.W.N. 565, footnote.

See ACT XII OF 1887, s. 21, 17 C. 680.

Suit for partition—Appeal—*See* ACT XII OF 1887, s. 21, 24 A. 381=A.W.N. 1902, 88.

Determining appellate forum—*See* ACT XII OF 1887, s. 21 (1), 23 C 536.

For partition—*See* MAD. ACT III OF 1873, s. 12, 15 M. 69=1 M.L.J. 481.

See PUN. ACT XVIII OF 1884, ss. 3, 40, 20 P.R. 1894.

Suit for possession—Upon what basis should such suit be valued — Plaintiff's case, not defendant's pleas, should be looked to—*See* PUN. ACT XVIII OF 1884, s. 40 (1), 199 P.L.R. 1908.

Redemption suit—*See* PUN. ACT XVIII OF 1884, s. 40 (1), 197 P.L.R. 1908.

Suit by reversioner for declaration that a mortgage by widow will not affect his interest. *See* PUN. ACT XVIII OF 1884, s. 40 (*b*), 42 P. R. 1907=100 P.W.R. 1907=66 P.L.R. 1908.

See U P. ACT XII OF 1881, s. 93, cl. (*h*), 15 A. 363=A.W.N. 1893, 148.

Acceptance of lesser sum than the suit-amount by consent decree—Appeal against order passed in execution of such decree—Jurisdiction — *See* APPEAL — FORUM OF APPEAL, 6 C.L.J. 38.

Undervaluation of suit—Return of plaint—Dismissal of suit—*See* APPEAL—ORDERS, 8 C. 834.

Value of suit for purpose of appeal to Her Majesty in Council—Certificate for leave to appeal to Her Majesty in Council, question of misjoinder of parties and causes of action not sufficient ground for granting—*See* APPEAL TO PRIVY COUNCIL—GENERAL, 1 O.C. Sup. 18.

Right of party to prove value of subject-matter contrary to valuation in plaint or memo of appeal—Mesne profits, pending suit if to be added—*See* APPEAL TO PRIVY COUNCIL—PRACTICE AND PROCEDURE, 14 C.W.N. 872 =6 Ind. Cas. 792.

Valuation of appeal—Action for injunction against infringement of trade-mark—Appeal to Privy Council—*See* APPEAL TO PRIVY COUNCIL — PRACTICE AND PROCEDURE, 10 C.W.N 7=15 M.L.J. 461, P.C.

See APPELLATE COURT—REJECTION OR ADMISSION OF EVIDENCE, 3 C.L.R. 79.

Privy Council application for leave to appeal to—Valuation of suit, questions indirectly in issue as regards—Appeal to Privy Council, fit case for—*See* CIV. PRO. CODE, 1908, ss. 109, 110, 4 O.C. 234.

Valuation of Suits—*continued.*

"Amount or value of the subject-matter of the suit" in s. 596, Civ. Pro. Code—Appeal to Privy Council—Suit for partition—Whether the value of the whole estate or of the share claimed test of valuation—*See* CIV PRO.CODE, 1908, s. 110, 3 C.L.J. 257=10 C.W.N. 564.

Appeal to Privy Council—Value of the subject-matter of the suit—*See* CIV. PRO CODE, 1908, s. 110, 60 P.R. 1905=150 P.L.R. 1905.

See CIV. PRO. CODE, 1908, s. 115, 10 B. 610, F. B.

Suit to establish right to attached property—Jurisdiction of Munsif—*See* CIV. PRO. CODE, 1908, O. XXI, r. 63, 15 C. 104.

See CIV. PRO. CODE, 1908, O. XXI, r. 63, s. 11, 17 A. 69=A.W N. 1895, 3.

Issue taken as to, in Munsif's Court—No evidence adduced—Waiver—Interference by High Court in second appeal—*See* CIV. PRO. CODE, 1908, O XXXII, r. 7, 8 C.L.J. 266.

See CUSTODY OF WIFE, 53 P.R. 1891.

Suit by son contesting alienation by father —*See* CUSTOM, PUNJAB—ALIENATION, 59 P. L.R. 1905=58 P.R. 1905.

See DECLARATORY DECREE, SUIT FOR—DECLARATION OF TITLE, 14 M. 46.

Mortgage by member of Hindu Joint Family —Suit by co-parcener to set it aside—Value for purpose of jurisdiction—*See* HINDU LAW—ALIENATION, 112 P W.R. 1911.

Preliminary finding of Court as to valuation for purposes of Court-fee and jurisdiction—Interlocutory Order—Revision—*See* INTERLOCUTORY ORDER, 43 P.W.R. 1910=6 Ind. Cas. 647.

See JURISDICTION—GENERAL, 98 P.R. 1886.

Declaratory suit by objector against decree-holder and judgment-debtor—Valuation of suit for purposes of jurisdiction and course of appeal —Civ. Pro. Code, ss. 278, 283 and 617—*See* JURISDICTION—GENERAL, 74 P.W.R. 1908, F.B.=94 P.R. 1908, F.B.

See JURISDICTION—QUESTION OF JURISDICTION, 8 B. 31.

Valuation of suit—Appeal—*See* JURISDICTION—QUESTION OF JURISDICTION, 10 A. 524 =A.W.N. 1888, 218.

Effect of not objecting to, before the lower Court—*See* LAND SUIT, 78 P.W.R. 1910.

Market value of the subject-matter of suit for redemption—*See* LEGAL PRACTITIONERS —PLEADER—REMUNERATION, 6 O C. 130.

What to be taken as value of suit—*See* MESNE PROFITS SUITS FOR MESNE PROFIT AND ASSESSMENT IN EXECUTION, 7 Ind. Cas. 778.

Suit for foreclosure of mortgage—Subject-matter, valuation of—Jurisdiction—*See* MORTGAGE—FORECLOSURE, 11 O.C. 154.

Valuation of Suits—*concluded.*

See MORTGAGE—REDEMPTION, 73 P.R. 1899, U.B.R. 1910, 2nd Qr., 1910.

Suit for recovery of specific moveables—Refusal of defendant to produce—Plaintiff's valuation accepted—*See* MOVEABLE PROPERTY, A.W.N. 1907, 227.

See PLAINT—FORM AND CONTENTS OF PLAINT, 12 B 675.

See PLAINT—REJECTION OF PLAINT, 11 W.R. 177.

Plaint returned, on ground of undervaluation, for presentation to proper Court—Representing to same Court after amending, by striking off some of the items and properly valuing the rest—Jurisdiction—*See* PLAINT—RETURN OF PLAINT, 6 M.L.T. 261=33 M. 262=3 Ind. Cas. 338.

See PLAINT—RETURN OF PLAINT, 63 P. R. 1887.

See PRACTICE AND PROCEDURE, 8 C. 975 =11 C L.R. 399.

See PRE-EMPTION—MISCELLANEOUS, 92 P.R. 1900, 12 O.C. 31=1 Ind. Cas. 687.

Suit for damages for more than Rs. 10,000 dismissed on appeal—Damages not assessed by first Court—Value of subject-matter for purposes of appeal to Privy Council—*See* PRIVY COUNCIL, PRACTICE OF—GENERAL, 33 C. 893, P.C.

See REMAND, 5 W.R. 287.

Suit for declaration as to membership of tarwad—Suit instituted in Subordinate Court—Prior suit in Munsif's Court—Valuation of suit to avoid jurisdiction—Maintainability of suit—*See* RES JUDICATA—COMPETENCY OF COURT, 24 M. 275.

Raising valuation to avoid bar of *res judicata*—*See* RES JUDICATA—ESTOPPEL BY JUDGMENT, 10 C.P.L.R. 89.

See SPECIAL OR SECOND APPEAL—ERRORS OF LAW OR PROCEDURE, 1 B.H.C. 62, 5 B. H.C.A.C. 153.

Varg.

Entry of kumri assessment in Chitta of vargdar, whether amounts to recognition of right of ownership in vargdar—Payment of kumri assessment — Ownership by prescription as against the state—*See* LAND TENURE IN KANARA, 3 B. 452.

Variance between Pleading and Proof.

See ESTOPPEL—STATEMENTS AND PLEADINGS.

See FRAUD—PLEADINGS AS TO FRAUD.

See ISSUES.

See PLAINT.

See PLEADING.

See PRACTICE AND PROCEDURE.

Variance between Pleading and Proof —*continued.*

See WRITTEN STATEMENT.

(1)—*Suit based on one title—Decree based on another title—Decree irregular.*—In a case where plaintiff claimed certain landed property basing his title on a Will, the lower appellate Court awarded the property to the plaintiff as being solely his by inheritance, thus giving to him a decree upon a title wholly different from the title advanced. *Held* that it was irregular as the decree should always have regard to the title which the plaintiff stated in his plaint and has there verified. JANKEE v. JHANJOO, **2 N.W.P. 407.**

(2)—*Pleadings—Proof of different title.*—A plaintiff is bound to prove his claim as he has laid it in his plaint; and he is not entitled to succeed upon proof of a different title. BIJOYA DEBIA v. BYDONATH DEB, **24 W R. 444.** [*F.*, 5 C. 246=4 C.L.R. 443; *R.*, 7 C.L.R. 103; *D.*, 2 C. 418, 3 C. 224, 14 C. 592.]

(3)—*Reg.* XI *of* 1825, *s.* 4, *cl.* 1 (3)—*Formation of chur by gradual accretion — Suit by Government—Cause of action Setting up case different from plaint, effect of—Right of Government confined to assessment of revenue.* A chur which had been formed by gradual accretion was first settled with the putneedar of mouza B, and then with its zemindar. During the second settlement, another chur formed which, after having been the cause of disputes between the putneedar of B and the putneedar of the adjoining mouza D, was taken possession of by the latter, after it was declared to be an accretion to his mouza in all the three suits brought by him to establish his right, in one of which the Government also was made a party. Subsequently, the Government brought a suit for possession of the second chur to which those suits related, and for setting aside the decrees in the two suits in which it was not made a party, stating the result of those suits to be the cause of action. A suggestion which was not made in the plaint and did not appear in the issues, was made in the lower Courts, that the first chur which had been settled with the Zemindar of mouzah B, and which had been over and over again described in documents to which Government was a party as "contiguous to the bank of the river H," as "adjoining" and as "contiguous" to mouzah B, originally came into existence as an island, and that the Government were entitled under cl. 3 of s. 4 of Reg. XI of 1825, to take exclusive possession of it with all its accretions. *Held* that Government was not at liberty to depart from the allegations with which it had come into Court, that, as the right of Government in case of such accretion was limited to its revenue only and not to its actual possession, they were bound to accept the result of the litigation between the owners of the respective mouzahs, and to settle the revenue with that person who had been declared to be the owner. MOOKTAKESHEE DEBIA v. THE COLLECTOR OF BURDWAN, **12 W.R. 204.**

Variance between Pleading and Proof —*continued.*

(4)—*Unnecessary averments and issues—Defendant's admission—Civ. Pro. Code*, s. 146 —*Not fatal.*—Plaintiff claimed a moiety of an alienated land as the adopted son of an undivided paternal uncle. The purchaser denied adoption, but admitted he was the vendor's undivided brother and justified the sale. *Held*, even if the adoption was not proved, on the defendant's admission, the plaintiff should get a moiety—if the sale could not be justified. The rule that decree should follow pleadings is only intended to prevent surprise, and cannot apply to a decision based on the admissions of the defendant. APPAYYA v. RAMIREDDI, **11 M. 367.**

(5)—*Issues—Special appeal.*—A Judge is not bound to decide a question not raised by the plaintiff. When a case comes before the High Court in special appeal, the parties are to be held to the case made in Courts below. TARA CHAND ROY v. NOBIN CHUNDER ROY, **21 W. R. 132.**

(6)—*Practice—Amendment, when allowed.*—Amendment can only be allowed in those cases where the plaintiff really has an honest case, but, either through mistake or some misapprehension, has not placed the real facts before the Court. BHYRO DUTT v. MUSSAMUT LEKHRANEE KOOER, **16 W.R. 123.**

(7)—*Variance between pleading and proof.—Civ. Pro. Code*, 1859, *Operation of, as compared with old procedure in equity.*—Under the Civ. Pro. Code, parties are not bound so strictly to the pleadings as in any equity suit under the old procedure, if their being so bound would work in justice. DOSSEE v. TARACHURN COONDOO CHOWDHRY, **Bourke, A. O.C. 48.**

(8)—*Plaint—Variance—Partnership—Suit for money advanced.*—Variance between plaint and proof (as for instance, between the contract alleged and the contract proved) does not necessitate the dismissal of a suit under the Civ. Pro. Code. Where a person brought a suit for money advanced and for half profits on an alleged partnership, *held* that although his claim to half profits failed or was abandoned, he was entitled to a decree for the balance of the advance still due to him (*Trevor, J., contra*). SHEIKH MAHOMED REEZAOODDEEN v. HOSSEIN BUKSH KHAN, **1 W.R. 300.**

(9)—*Raising issues after variance is shown.*—A plaintiff will not be allowed to set up one case, and, having proved another, to ask for issues to be raised to suit the proof; but when a plaint and its proof necessarily lead to one or more particular issues, it is the duty of the Court, if these issues do not come by surprise on the defendant, to raise such issues, and to give the relief thereon to which the plaintiff is entitled. OBHOYCHURN MULLICK v. WOOMES CHUNDER PAUL, **2 Hyde 263.**

Variance between Pleading and Proof —*continued.*

(10)—*Amount proved exceeding amount claimed—Decree.*—Where the amount to which the plaintiff would be entitled on the evidence exceeds that specified in the plaint, plaintiff is restricted to the amount so specified. NATHOORAM v. JARDINE, SKINNER AND CO., **Cor. 118.**

(11)—*Failure to prove allegations—Opposite party entitled to benefit of presumption arising from.*—It was ruled in this case that the law, in allowing parties to conduct their suits through authorised agents or mooktears, does not contemplate, that, if they are not examined themselves, they may put the Court off with an agent or witness who has got no personal knowledge of the facts upon which the decision of the case depends. Every party to a litigation is expected to prove the allegations upon which he relies, and, although the *onus* of proof might be, in the first instance, upon his adversary, the latter is clearly entitled as to the burden to the benefit of such presumptions as naturally arise from the failure of the former to fulfil this obligation. GUNEE BISWAS v. SREEGOPAL PAUL CHOWDHRY, **8 W. R. 395.**

(12)—*Advance of money for trade—Agreement to repay out of profits—Breach of agreement—Crediting profits for old debts—Suit for money advanced, maintainability of.*—Plaintiff advanced a certain sum of money to the defendant to carry on an indigo factory, under an agreement (*karbar-namah*) in which it was stipulated that such advance should first be repaid out of the profits realised from the manufactured indigo. The former, who had taken the whole amount the profits which exceeded considerably the amount of the advance, credited it all on account of some old debts of the defendant's father, in distinct violation of the terms of the agreement under which the money was borrowed. Plaintiff then sued the defendant for the recovery of advance money. *Held* that the plaintiff's suit ought to be dismissed altogether, and that it should not even be allowed to proceed against the defendant as his father's representative, in as much as the plaintiff, in seeking to have the defendant declared personally liable for a sum of money for which he was in no way liable, did not institute the suit ingood faith. F. PERROUX v. RAE LUCHMEEPUT SINGH, **12 W.R. 113.**

(13)—*Non-proof of defendant's plea—Decree—Nature of.*—The setting up by the defendants of a title in themselves which they failed to prove does not prevent the Court from deciding according to the truth of the case. MUTLOOB ALI v. MUSSUMMAT KIRIA, **1 Agra 276.**

(14)—*Defence not set up by defendant.*—It is not competent for a Court to set up a defence which not only the defendant does not make, but which is inconsistent with the facts that he has himself stated. RANEE SHURUT SOONDUREE DABEE v. KOOMAR PURESH NARAIN ROY, **13 W. R. 464.**

Variance between Pleading and Proof —*continued.*

(15)—*Pleadings—Judge not to make a case for a party.*—A Judge ought not to make for the defendant a case which he does not make for himself. RADHA BINODE DUTT v. KOOTABODE MUNDUL, **15 W. R. 363.**

(16)—*Pleadings—Bond—Tender of payment —Want of consideration—Plea not allowable.*—In a suit by the plaintiff against certain *purdanashin* ladies for the recovery of money due on an instalment-bond, the latter pleaded tender of payment but failed to prove the same. On appeal, it was urged that the ladies were in reality over-reached by the plaintiff, and that they were made to execute the bond for money which they never owed. *Held*, that it was too late for them to urge that point. Their written statement was silent as to any such treatment and they defended the suit throughout on the ground that they did all they could to induce the plaintiff to take the money as it fell due and were not therefore amenable to the penal clauses of the bond. SREEMUTTY CHITTRA COOMARY BEBEE v. RAMLALL MOOKERJEE, **18 W. R. 334.**

(17)—*Execution of decree—Sale—Obstruction to purchaser — Suit for possession—New case made by Appellate Court—Arrears of rent.*—In execution of a decree against one R (the widow of T), certain land belonging to T was sold and the auction-purchaser, who was obstructed by S (the brother of the deceased) T when attempting to take possession, instituted a suit against S for possession of the property. The defence was that neither the plaintiff nor his predecessors in title had been in possession within 12 years, and that the defendant had purchased the property from T under a kobala. The first Court decreed the claim. On appeal, the Judge having ascertained from the execution records which he sent for that the decree was a personal decree for rent against the widow, *held* that what the auction-purchaser-plaintiff took by his sale was only the life interest of the widow and accordingly dismissed the suit. *Held* that the lower Appellate Court was wrong in having made a new case for the defendant, the more so without raising a fresh issue and allowing the plaintiff an opportunity of meeting it. *Held*, further, that, the decree being one for arrears of rent on particular property, it was not merely a personal decree against the widow, but would bind the tenure also. RAJA RAM BANERJEE v. SONATUN ROY, **23 W.R. 404.**

(18)—*Suit on settlement of account—No proof of settlement—decree for accounts not barred—Competency of Court.*—Where the plaintiff sues for a debt putting his books in evidence, relying on an alleged adjustment of accounts, but fails to prove the adjustment, *held* that his suit ought not to be dismissed. There was no impediment to the Court in framing a new issue (after a suitable order in regard to costs on account of the investigation into the plea of adjustment) and going into the evidence in regard to such items of the account as were

Variance between Pleading and Proof —*continued.*

recoverable under the Limitation Law. KISHEN PERSHAD v. BHAWANEE DEEN, **Agra F.B. 47=Ed. 1874, 35.** [*R*, 15 W.R. 24.] *See also* RAMSAHOY v. SEETHOO, **1 N.W.P. 28; Ed. 1873, 26.**

(19)—*Dissolution of partnership — Suit on settlement of accounts—Omission to prove settlement.*—When a person brings a suit based on a contract alleged to have been constituted by a settlement of accounts subsequent to the determination of a partnership of which he was a member, and fails to prove such contract, he will not necessarily be precluded by such failure from claiming in the same suit to have it decided whether any and what sums were due to him on the determination of the partnership, in respect of any sums advanced by him or standing to his credit in the partnership accounts within six years before suit, and also in respect of any profits which may have accrued to him within the same period. BABOO RAMSAHOY v. SEETHOO, **1 N W.P. 26.**

(20)—*Partnership—Suit for money based on adjustment of partnership accounts—Adjustment not proved.*—Where a suit to recover a sum of money is based upon an adjustment of partnership accounts between the plaintiff and the defendant, and the plaintiff, both in the first Court and in the second Court, allowed the issues to be framed *solely* on that alleged adjustment, and failed to prove the said adjustment, the suit ought to be dismissed and the plaintiff would not be entitled to have the general question of the defendant's indebtedness to him under the partnership between the two gone into, and to recover whatever amount might be found due to him. NOBIN CHUNDER KOONDOO v. SREEDHUR BHUTTACHARJEE, **15 W.R. 24.**

(21)—*Pleadings—New ground of suit raised first in appeal—Suit to set aside alienation.*—Where a suit by a Hindu to set aside an alienation on the ground that the alienors were the sons of an illegitimate son of plaintiff's grandfather, and were, therefore, not entitled to any interest in their grandfather's property, was dismissed in the Court of first instance, the objection of illegitimacy not having been made out, the plaintiff could not be allowed to raise, for the first time in appeal, a new ground, *viz.*, that the sale was still invalid on the ground, that under the *Mitakshara* law, joint owners of an ancestral estate could not alienate their shares without the consent of the others. The ground urged in appeal being extraneous and separate from that on which the plaintiff based his prayer, cannot be said to be involved in it. SRI PRASAD v. RAJ GURU TRIUMBUKNATH DEO, **6 B.L.R. 555=14 W. R. 386.** (11 M.I A. 7, *F.*)

(22)—*New plea raised for first time in appeal —How to be dealt with by appellate Court—Ben. Act* VII *of* 1868—*Irregular sale under—Remedy of aggrieved party—Regular suit.*—An appellate Court is justified in throwing out a plea which had not been raised at all in the Court of first

Variance between Pleading and Proof —*continued.*

instance, but is raised for the first time on appeal before it. A sale held under the provisions of Act VII of 1868 (B. C.) but improperly and irregularly, must be questioned only by a regular suit brought for that purpose within proper time and against proper parties. RAJ LUKHEE DASSEE v. PEARUN BIBEE, **23 W. R. 82.**

(23) —*Pleadings —Inconsistent titles—Title by purchase — Title by inheritance.*—Plaintiff, having set up a title by purchase of the whole property from K, is not at liberty to change his case entirely, and to come in and set up another and inconsistent title, apparently founded either on inheritance or joint purchase with K. DOSS RAM DOSS v. MOHENDRO ROY DECHA, **18 W. R. 274.**

(24) —*Variance between pleadings and proof—Dismissal of suit—Procedure.*—A Court ought not to determine a case merely upon the ground of variance between the allegation in the plaint and the proof. If the plaintiff fails to prove the contract as alleged, the Court ought to find how much is due from the defendant to the plaintiff and also in respect of what premises, but it should not dismiss the suit. MAHARAJAH RAJENDUR KISHORE SING v. KARUMMUN SING, **5 W.R. Act X, Rul. 62.**

(25)—*Pleadings—Variance between case set up and evidence —Practice —Contract of sale set up—Contract of agency proved.*—In a suit for the recovery of damages for breach of contract, it was alleged in the plaint that the defendants entered into a contract with the plaintiffs for the purchase of indigo seed, that the contract bound the plaintiffs to the sale, and the defendants to the purchase, that the plaintiffs were ready to deliver the seed, but that the defendants refused to take delivery. From the evidence of the plaintiffs it appeared that they did not enter into the contract alleged in the plaint, but agreed to buy for the defendants as their agents. The question to be determined was whether, under the circumstances, the defendants were liable to pay the price of the seed; and the issues which were raised were issues which admitted of that question being tried. However, the Judge dismissed the suit, holding that the plaintiffs were bound to prove their case as stated in the plaint and that their denial of the relationship of vendor and purchaser was fatal to their claim. *Held*, that the Judge was wrong in saying that he was bound to try the suit in the manner in which the plaintiffs framed there plaint. He ought to have framed and tried the issues on the merits instead of dismissing the suit on an objection taken to the frame of the plaint. The object of the plaint was to bring the matter in dispute between the parties before the Court, but upon the settlement of issues, the Judge is to ascertain what is the real question to be tried, and at the hearing, if he can, either upon the issues already framed, or upon amended issues, determine that question, he ought to do so. W. R. ARBUTHNOT v. C.D. BETTS, **6 B L.R. 273=14 W.R. 181.** [*Expl.*, 14 B.L,R. 21; *R.*, 11 C.L.J. 2=3 Ind. Cas. 408.]

Variance between Pleading and Proof — *continued.*

(26)—*Suit for ejectment by landlord—Failure to prove lease—Case put forward in plaint—Alternative case—Practice.*—A party must be limited to the case which he puts forward in his plaint. He may indeed, from the commencement of the suit, put forward in his plaint an alternative case, and thus the defendant will have notice that he has more than one case to meet and will not be taken by surprise. Where the plaintiff has not put forward an alternative case he may have leave to amend his plaint and to state his case therein correctly, if the Court think that he has rested his claim upon wrong grounds from misconstruction, ignorance of law or fact, mistake or misconstruction of documents. The Court will then make such order as may to it seem just, regarding the adjournment of the hearing and costs. But, as a general rule, a plaintiff must abide by his plaint. The adoption by the Courts of a general principle of decision other than this would encourage perjury and forgery. In an ejectment suit brought on the ground, that the defendant was a tenant, the tenancy was not proved. The plaintiff could not succeed on his general title. LAKSHMIBAI v. HARI *bin* RAVJI, **9 B.H C. 1.** [*Not F.*, 1 N.L R. 4; *F.*, 10 B. 451; 15 A. 186=13 A.W.N. 69; *Appr.*, 21 W.R. 208; *R.*, L.B.R. 1872—1892, 355, 3 N L.R. 94, 10 C.L J. 538=6 M.L.T. 203=3 Ind. Cas. 346, 12 C.L.J. 357=7 Ind. Cas. 166; *D.*, 25 A. 498=23 A.W.N. 112, F.B.]

(27)—*Variance between pleading and proof—Practice—Encroachment.*—In a suit for preventing an encroachment on certain land on the allegation that it had been set apart for recreation, if the evidence establishes that it was set apart generally for the more convenient occupation of the houses surrounding it (which would include recreation purposes), the plaintiff ought not on that account to fail altogether and be required to institute a fresh action, especially where the defendant had the opportunity of adducing and has adduced evidence to rebut the case of the plaintiff. RANCHORDASS ANTHA BHAI v. MANEKLOL GORDHANDASS, **17 B. 648.**

(28)—*Landlord and tenant—Suit for* khas *possession by landlord — Plea of mokurruree title—Jamabandee papers relied on by defendant impeached by plaintiff— No proof as to forgery —Right to obtain declaration denying defendant's right to hold land at fixed rent.*—Plaintiff sued to recover from the defendants possession of certain land, which was occupied by them and to which they set up a mokurruree title upon the footing of some jamabundee papers. The plaintiff said that these papers were fabricated and had been fraudulently

Variance between Pleading and Proof —*continued.*

made use of by the defendants with the knowledge that they were forged for the purpose of supporting their alleged mokurruree title. On this ground, he asked to have these papers declared forgeries and to recover possession of the land. He however failed to prove either that the papers were fabricated or that the defendants made use of them knowing their character as such. Having failed in this, he however asked for a declaration that the defendants had no right to occupy the land, which was the subject of the suit, at a fixed rent. *Held* that the plaintiff was not entitled to have a declaration of this kind for two reasons: firstly, a declaration of this kind could rightly be asked for only in a separate suit against each separate occupant of the land; secondly, the plaintiff having chosen to prove a specific fraud against the defendants and having made his cause of action entirely dependent upon that, he could not be allowed at the trial to succeed upon a matter which was entirely collateral to the fraud, and in the face of a finding that no fraud had been established. SAHEB ROY v. GUJADHAR PERSHAD NARAIN SINGH, **22 W.R. 221.**

(29)—*Act* X *of* 1869, s. 4, *presumption of occupancy under, not claimable by defendant with fictitious pottah.*—In this suit for rent at an enhanced rate, it was objected on second appeal that the Judge ought to have taken into consideration the fact that the defendant had held for 20 years at a fixed jumma and that the presumption should have been made that he had so held at that rate since the time of the Permanent Settlement, under s. 4 of Act X of 1859. The High Court decided that the defendant, having set up an alleged *mourossee* pottah, which was found, apparently on good grounds, to be fictitious, could not fall back upon the rights which he might have had under that section. PETUMBER SHAHA v. JEBUN SINGH BURMONEE, **2 W.R. Act X, Rul. 6.**

(30)—*Act* X *of* 1859, s. 77—*Suit for arrears of enhanced rent—Intervenor alleging possession in part—Possession of both not proved—Suit for rent - Rate not admitted—Sharhanama not proved.*—In a suit for arrears of rent, the plaintiff, alleging himself to be the proprietor of an 8 annas share, sued one of the ryots for rent, and a third party intervened and alleged that he had been in possession and enjoyment of the rents of 4 annas out of the 8 annas which the plaintiff had claimed, and the ryot supported the intervenor, the Judge on appeal finding that neither the plaintiff nor the intervenor had been in possession and enjoyment of the four annas of the rent in dispute, dismissed the plaintiff's suit. *Held* that, as between the claim of the plaintiff and that of the intervenor, the Judge having found against the intervenor, was bound to decree for the plaintiff in accordance with s. 77, Act X of 1859. Where a *sharhanama* under which the plaintiff

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claimed a higher rate of rent than the defendant admitted was not proved, the decree in favour of the plaintiff would be only to the extent and at the rate admitted by the ryot. PHOOLABUTTEE KOOER v. GOPAL MUNDUR, **13 B.L.R. 244, Note = 10 W.R. 81.**

(31)—*Suit for redemption—Defendants denying mortgage sued on but producing another—Court's power to pass decree according to terms of mortgage admitted.*—In a suit for redemption where the plaintiff produces a mortgage the genuineness of which is denied by the defendant, and the defendant produces a mortgage from the plaintiff's ancestors, to the defendant's ancestors, the Court is justified in making a decree for the restoration of the lands according to the terms of mortgage produced by the defendant. KUNHI KUTTI NAIR v. KUTTY MARACCAR, **4 M.H.C. 359.** [*F.*, 8 M. 415, 19 M. 160; *R.*, 7 M. 226, 18 M. 462.]

(32)—*Suit on mortgage—Defendant denying plaint mortgage and pleading another mortgage.*—The plaintiff sued as purchaser of the equity of redemption, for the redemption of a mortgage which, he alleged, was for Rs. 175 and executed in the year 1839. The defendant pleaded that the mortgage was for Rs. 256 and not in the year 1839. The Court of first instance included in the first issue the question whether the principal mortgage money was Rs. 175 or Rs. 256, and allowed the valuation of the claim to be increased to Rs. 256, but rejected the claim, on the ground that the particular mortgage recited by the plaintiff had not been proved. The District Judge confirmed this decree, though he thought it probable that there was a mortgage for Rs. 256. On appeal to the High Court, *held* that the plaintiff was entitled to have the question of the mortgage for Rs. 256 inquired into, and the decree of the lower Court was reversed and the case remanded for a decision on the merits. CHIMNAJI v. SAKHARAM, **17 B. 365.** [*Diss.*, 18 A. 403, 3 O.C. 173.]

(33)—*Suit for possession by mortgagor—Allegation of payment of entire mortgage amount—Balance found in favour of mortgagee—Suit not maintainable as premature—Plaintiff not entitled to conditional decree.*—Suit for possession by a mortgagor on the ground that the loan had been paid off from the assets of the estate and that he was entitled to re-enter and recover surplus collections from the defendants. It was found by the Judge that a balance was yet due by the plaintiff, and the question arose whether the order of the Judge allowing him to recover possession on payment of balance was a correct order. The High Court was of opinion that a large balance yet remaining in favour of the defendants, the plaintiff was, till it be paid off, not entitled to recover possession. The suit should be deemed to have been brought prematurely and should be dismissed, for, the mortgagor could not disturb the possession of the mortgagees so long as the balance

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existed in their favour, and it was not competent to the Court to have awarded a conditional decree under the circumstances. MUSSAMUT SUSTA KOOER v. SHAH KIMDUN LALL, **8 W.R. 369.**

(34)—*Civil Court—Jurisdiction—Partition of revenue paying land—Declaratory suit.*—A suit for partition of land of a joint undivided revenue paying mahal is not cognizable by the Civil Court. In the case of rent-free land, such a suit will not succeed, unless the quantity and situation of the land is specified. Where a person cannot obtain a partition, he cannot as of right claim to have a declaratory decree. RUTTEN MONEE DUTT v. BROJO MOHUN DUTT, **22 W. R. 11.** [*Affirmed*, 22 W.R. 333; *F.*, 8 C.L.R. 367.]

(35)—*Appeal—Issues—New point urged in appeal.*—Where, in a suit for delivery of certain papers, the plea of the defendant that he had made over all the papers to the plaintiff's son was put in issue, and the Court of first instance found that some papers were so delivered, and ordered the delivery of the remaining papers, and the appellate Court, on appeal, restricted itself to the trial of the sole issue of fact, *viz.*, whether the papers were received by the plaintiff's son as his agent, *held* that the point as to the agency of the plaintiff's son taken in appeal was a departure wholly from the case made in the first Court and ought not to have been entertained by the Judge. PUNCHANUN ROY v. TROYLUCKHO MOHINEE DOSSEE, **14 W.R. 466.**

(36)—*Cause of action—Suit by execution purchaser for possession—Limitation—Stating cause of action in plaint.*—Where, in a suit for possession by an execution-purchaser, the plaintiff alleged that one S, being at that time in wrongful possession of the property, had voluntarily retired from it and had, so far as in her lay, yielded that possession to the plaintiff, but that the defendant, having no right to any portion of the property, had so acted as to prevent the plaintiff from obtaining the benefit of such cession on the part of S and had in fact obstructed possession, *held* that these facts, if satisfactorily proved, would constitute a cause of action so that the plantiff would be enabled to maintain his suit commenced within 12 years from the date of such obstruction. Although that cause of action was not stated in the plaint, but a different one, *viz.*, the decree in the ejectment-suit, still, if the plaintiff alleged and proved the facts from which the Court would be enabled to draw conclusions of law for itself, the plaintiff ought not to be strictly bound to the alleged accrual of the cause of action, so long as that arose within 12 years before the commencement of the suit. MARIAM BEGUM v. RYE CHURN DUTT, **13 W.R. 269.**

(37)—*Limitotion—Possession—Failure to prove dispossession on particular date mentioned in plaint.*—The mere failure of the plaintiff to prove that he was dispossessed on the particular date mentioned in the plaint is not of

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itself a sufficient ground to justify the dismissal of the suit. If the plaintiff can prove that he has a title to the property in dispute, and that that title is not extinguished by the operation of the Statute of Limitation, he would be entitled to a decree, notwithstanding his failure to establish the allegation of dispossession on a particular date. HURRO CHUNDER CHOWDHRY v. GOBIND CHUNDER MOITRO, **15 W.R. 178.**

(38)—*Suit for possession—Abandonment of plea before the Appellate Court—New relief.*—It is not open to the plaintiff in a suit, to shift the ground taken in the Court of first instance, and not only to abandon the greater part of the claim, but to ask for a remedy entirely distinct from that asked for in the plaint. SOOBUL DOSS MULLICK v. WOOMA CHURN MOZOOMDAR, **25 W.R. 383.**

(39)—*Defendant* ex parte—*Decree—Execution—Defendant not competent to deny liability in execution.*—A defendant in a suit for possession was charged with having jointly with others ousted plaintiff, but did not choose to deny the ouster, or appear to defend the suit or oppose the appeal, with the result that possession with mesne profits was decreed. *Held* that he was liable under the decree and could not subsequently (at the time of execution) plead that he had not been in possession. KHAJHA MAHOMED ISAH KHAN v. MOTHOORA DOSS, **19 W. R. 96.**

(40)—*Hindu Law—Joint family—Purchase by managing member out of separate funds—Character of purchase—Sale by widow—Rights of reversioners.*—Property purchased by the eldest member and manager of a joint Hindu family out of his own separate funds is not joint property. In a suit for possession of certain property as belonging to a joint family, the same having been sold by the widow of the managing member without authority, plaintiff alleging that the property was joint property because it was purchased by the managing member out of family founds, the lower Court found that the property was not joint family property, and the plaintiff failed. Thereupon, the plaintiff, as reversioner, could not be allowed in special appeal to come in and ask the Court to have it declared that the acts of the widow were void as against him. MADHO PERSHAD v. LALLA JEETUN LALL, **17 W.R. 98.**

(41)—*Suit for* khas *possession—Title not made out—Title of one plaintiff to a moiety proved—Cause of action.*—Where two plaintiffs sue jointly to recover possession of a specified portion of land, and they fail to make out their title to that portion of land, or to any part of it, and all that they make out is that one of them is entitled to an undivided moiety of the whole land, this does not give them, or either of them, a right to an indefinite decree for such moiety. SHEO NUNDUN PERSHAD v. MUKDOOM BUKSH, **20 W.R. 364.**

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(42)—*Act* VIII *of* 1859, *s.* 15—*Declaratory decree—Cause of action—Suit and decree.*—Unless a plaintiff can show that there is some relief which a Court can give, no declaration of right can be made, and no suit will lie under s. 15, Act VIII of 1859. When a plaintiff in a suit asks for one thing (*e.g.*, exclusive possession), a Court ought not to give him a decree, because he proves that he is entitled to another thing (*e.g.*, joint possession). BAIJNATH CHATTERJEE v. LAKHI MONI DEBI, **5 B.L.R. 514, Note=12 W.R. 248.**

(43)—*Claim for separate property of vendor—Claim not alterable as for vendor's share in family property.*—Plaintiff sued for an entire house basing his claim exclusively on a purchase from a person to whom he alleged that it exclusively and separately belonged. The case was not one where a person alleges purchase of joint family property from one member of the family and, as the suit had been framed, the plaintiff could not, on failing to prove that the property was the separate property of his vendor, turn round and ask the Court to give him a decree for the share to which such vendor was entitled as one of the members of the joint family. GOUR BEHAREE RAM BHUGGUT v. SHEO RUTTUN KOONWAR, **10 W.R. 243.**

(44)—*Suit for exclusive possession—Joint ownership proved but not exclusive title—Decree cannot be for exclusive possession—Practice—Plea not alleged in plaint—Power of Court to set up plea at hearing.*—The plaintiff asked for exclusive possession of the property in suit, alleging that it had been allotted to him in a partition. It was found on evidence that the property belonged jointly to the plaintiff and the defendants. *Held*, that a decree for exclusive possession could not be given to the plaintiff as he had failed to prove exclusive title. [*R.*, 20 B. 627, 3 Bom. L.R. 598=26 B. 141, 8 Bom. L. R. 99, 5 N.L.R. 105=3 Ind. Cas. 24.] Where a case not alleged by the plaintiff in the plaint is disclosed in the evidence, the Court can allow it to be set up, only when a specific issue has been raised on it and the defendant has been given an opportunity of meeting it. PARSHRAM v. MIRAJI, **20 B. 569=P.J. 1895, 161.** (12 A. 556, 1 B. 95, 20 B. 676, *R.*)

(45)—*Possession—Joint property—Suit by co-owners for exclusive possession—Practice.*—Plaintiff sued for the recovery of possession of certain land of which he alleged he was the owner by purchase. The defendant contended that the land was the joint property of himself and the plaintiff, but asserted his own sole right to retain possession, and said that the plaintiff's remedy was to bring a suit for partition. It was found that the property was joint but that the plaintiff had been in exclusive possession. *Held*, that as the plaintiff did not prove exclusive title, exclusive possession could not be awarded to him in a suit of this nature; and that he could be awarded only joint possession of the land with the defendant. NANA v. APPA, **20 B. 627.** (P.J. 1895, 161, *R.*) [*R.*, 3 Bom. L.R. 598=26 B. 141, 8 Bom. L. R. 99.]

(46)—*Improper decree by first Court—Dismissal of suit by Appellate Court, if legal—Powers of Appellate Court—Possession, Suit for—Partition in definite shares—Decree.*—The passing of an improper decree by a Court of first instance is no ground for the appellate Court to dismiss the suit, but only to pass a proper decree. [*F.*, 19 B. 323.] Where plaintiff sued for possession of a Khanabaree, and the evidence in the case showed that there had been no partition in definite shares, *held*, that the plaintiff should be restored to the sort of possession he enjoyed previous to his dispossession. RAJ KISHORE BAHADUR v. HAREE MOHAN BAHADUR, **19 W.R. 195.** [*F.*, 19 B. 323.]

(47)—*Suit for possession—Allegation of partition—Joint property—Relief when partition not proved.*—Where in a suit to recover possession of certain property, the plaintiff disclosed that the property was originally joint, but alleged that, by an arrangement between him and his brothers, the particular portion claimed became his own separate share, the Lower Appellate Court, upon plaintiff's failure to prove the latter allegation, was not debarred by law from framing an issue as to whether the plaintiff was entitled to recover to the extent of the interest which he had in the land if found to be joint property. FUKEER DASS POOROHEET v. GOPAL MOOKERJEE, **12 W.R. 107.**

(48)—*Plaint—Facts proved not consistent with statements in plaint—Relief.*—When a plaintiff asks for one thing, he must not be given quite a different relief, because he proves that he is entitled to it. NABIN CHANDRA MITTER v. MAHES CHANDRA MITTER, **3 B.L.R. App. 111 =12 W.R. 69.**

(49)—*Alternative reliefs in plaint—Partition—Findings of fact unaccompanied by reasons—Not conclusive in second appeal—Practice—Procedure.*—The plaintiff brought a suit to recover possession of the northern half of a certain plot of land, claiming to it have fallen to his share in a partition effected in 1887, and stating that he was illegally dispossessed thereof by the defendant in 1890. The plaint also contained an alternative prayer that, in case the partition alleged were not proved, the claim might be treated as one seeking a partition of the land. The suit was dismissed by the lower Courts on the ground that the alleged partition was not proved, and that no order for partition could be made in the face of the plaintiff's distinct allegation that it had already taken place. *Held*, that the plaintiff's allegation of partition did not preclude him from seeking the alternative relief on the strength of his general title. *Held*, also that where no reasons are given by a lower appellate Court for the conclusions arrived at, such conclusions

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cannot be accepted as legal findings of fact in second appeal. NINGAPPA v. SHIVAPPA, **19 B. 323.** [*R.*, 1 O C. 174, 91 P R. 1901=113 P.L.R. 1901, 12 C.L J. 357, 7 Ind. Cas. 166.]

(50)—*Mahomedan law—Pre-emption—Frame of suit — Partnership—Vicinage.*—A plaintiff, coming into Court as a pre emptor, on the ground of partnership in the appendages of the thing sold or *shufeh Khuleet* is bound strictly to prove his case, and he ought not to be allowed to shift his ground and make out a new case as a *shufeh Jah, i.e.*, as a pre-emptor on the ground of vicinage. GOBIND ROW v. GIRDHAREE SAHOO, **24 W R. 355.**

(51)—*Lease of property on unstamped agreement--Suit by lessor for possession of property on non-payment of rent - Lease—Use and occupation.*—A lease of certain property was made by its owner on an unstamped agreement in favour of another for a period of five years, reserving the payment of an annual rent by the lessee to the lessor. The lessee, though he paid the rent for the first three years, did not pay the rent for the remaining two years. The lessor and the lessee to recover possession of the leased property and also either to recover a sum of money for the use and occupation of it by the lessee or to recover the same sum as damages for the retention of the estate by the lessee from the date up to which rent was last paid by him. *Held*, that though the claim to relief made by the lessor on the basis of contract must fail, as the letters from which the contract was inferred could not be acted upon by the Court, as they bore no stamp, he could still fall back on his claim to recover damages for the use and occupation of the land, and that as the lessee had not denied the use and occupation of the land as alleged by the lessor, the former had no answer to the claim made for damages. MACGIVERON v. WALLACE, **5 N W P 65.**

(52)—*Bhowlee tenant—Suit for rent—Plea of mokurruree pottah not established — Nukdee rent—Evidence Act, s. 13—Relevancy.*—Plaintiffs who were the owners of a jagheer sued the defendant for balance of rent on the allegation that the defendant cultivated a portion of the jagheer. The defendant contended that he was not a bhowlee tenant and that he held the whole jagheer as mokurrureedar; but the defendant failed to establish his plea and it appeared that the defendant was holding the jagheer at a nukdee rent. *Held* that the plaintiffs could not succeed, as they failed to establish their case. In a suit for a balance of rent on the ground that the defendants were *bhowlee* tenants of a jagheer and not mokurrareedars as claimed by them, a roobakaree (a Court proceeding), in which certain decree-holders of an ancestor of the defendants sought to attach his mokurraree rights in the jagheer, was held to be relevant evidence under s. 13 of the Evidence Act. LUCHMEEDUR PATTUCK v. RUGHOOBUR SINGH, **24 W.R. 284.**

(53)—*Variance between pleading and proof—Suit for rent—Failure to prove kabuliat.*—The plaintiff, having sued for rent upon a kabuliat and failed to prove it, is not entitled to a decree if he shows that the defendants had paid him rent for a number of years, the Court observing that it would not be the exercise of a sound discretion to allow a party who relies upon a document to set up a fresh case when an issue as to the execution of such document is found against him, and there are good reasons for believing that the document is not genuine. NURROHURRY MOHONTO v. NARAINEE DOSSEE, **W. R.F.B. 23=1 Ind. Jur. O.S. 9=1 Hay 234=Marsh 70** *See also* NAIRAINEE DOSSEE v. NURROHURRY MOHONTO, **Marsh 70**; BHOYRUB CHUNDER CHOWDHRY v. HARADHAN GHOSE, **Marsh 561=2 Hay 666**; SIMROO KAREEGUR v. ANUND CHUNDER ROY, **Marsh 57=1 Hay 130**; JEETOO v. BEETUM, **Marsh 47=1 Ind. Jur O S. 85=1 Hay 112**; and FATIMA BEBEE v. ARIF SOOKANEE, **Marsh 263=2 Hay 106.**

(54)—*Pleadings—Title set up not proved—Setting up another title.*—Where the defendant has set up a bigh-brite as his title to the lands, he must stand or fall upon that title. He cannot be allowed, upon the failure of proof of that title, to say that he will adopt another title—a title depending, not on any deed, but derived by a 12 years' occupancy of the land as a ryot within the meaning of s. 6. Act X of 1859. MAHARAJAH WOODOY NARAIN v. DURRIAHO ROY, **W.R. 1864, 187.**

(55)—*Suit for possession—Plea of mourosee title—Failure to prove special plea—General rights.*—In a suit to recover possession from an auction-purchaser at a sale in execution of a decree, the plaintiff who comes into Court on a special plea, and that plea a mourosee title supported by a pottah, is bound to prove that plea, and if he fails, cannot be allowed to fall back upon his general rights as a kudemee ryot. RAM NAFFER KHARA v. DEGUMBER CHATTERJEE, **W R. 1864, 259.**

(56)—*Document, the basis of suit, disbelieved.*—Where a Court disbelieves a document which is the basis of the whole suit, the Court should dismiss the suit. KUREEMOODDEEN BISWAS v. HURRO CHUNDER GOOHO, **1 W.R. 305.**

(57)—*Suit to recover rent—Variance between plaint and proof—Discretion of Judge—Special appeal.*—In a suit by the owner of the land to recover rent from the alleged tenant and his two sureties under a written agreement, the lower Court, holding the agreement not proved, threw out the claim, declining to consider payments of rent, etc , in the previous years. *Held*, that this was a matter in the discretion of the Judge; and as there was no error of law in his proceedings, the High Court in special appeal refused to interfere. GOVIND RAMCHANDRA GOKHLE v. SHEK AHMED, **5 B.H.C. A C. 133.** [*Appr.*, 9 B.H.C. 1, F.B.]

(58)—*Variance between pleading and proof—Special cases—Suit for pottah at fixed rate of rent—Failure in proof.*—In a suit brought by

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a raiyat to obtain a pottah at a fixed rent, under s. 3 of Act X of 1859, on the ground that the lands have been held at a fixed rent which has not been changed from the time of the permanent settlement; if the plaintiff fail in proving such a holding, he is not entitled in that suit to have a decree under s. 5 for a pottah at a fair and equitable rate. DOORGA MAHTOON v. KANHYE LALL AJHA, **Marsh 371=2 Hay 422.**

(59)—*Suit for ejectment—Failure to prove kubooleut and rejection of pottah filed, effect of.*—Plaintiff, in this case, came into Court relying on a kabooleut as his main deed, and, having failed to adduce any evidence to prove its execution, subsequently filed a pottah which the lower appellate Court rightly declared to be not proved. Plaintiff then sought to fall back on a general statement that he had a jote pottah, that the lands in question were comprised in it, and that, therefore, he could oust the defendant who was duly in possession. But the High Court *held* that plaintiff, having failed to prove the kubooleut, and his pottah having been rejected, it was not open to the plaintiff to seek to rely on such general statement. GOBIND CHUNDER LAHORY v. JARDINE SKINNER AND CO., **7 W.R. 163.**

(60)—*Suit for pottah from shareholder—No evidence as to what is fair and equitable rate of rent—Right to pottah on ground of being occupancy ryot—Procedure.*—The plaintiffs sued as ryots to obtain from twelve anna-shareholders a pottah corresponding with a kubooliat which they said these twelve anna-shareholders had taken from them, and according to the promise to give them a pottah contained in the chittee which they also said was exchanged at the same time. The lower appellate Court came to the conclusion that the plaintiff had failed to make out the ground on which he relied when he brought his suit for obtaining a pottah from the twelve anna-shareholders; but the Court was further of opinion that the plaintiff had made out that he was entitled to the right of occupancy which is given by the rent law, and consequently, as occupancy ryot, he was entitled to obtain from the zemindar a pottah at a fair and equitable rate of rent, and finding that there was no evidence before it upon which it could arrive at a conclusion as to what would be, as a matter of fact, a fair and equitable rate of rent to be paid for the land, gave them a decree at the old rate. *Held* that this decision was erroneous, because there was no evidence upon which the question as to the fair and equitable rate of rent could be determined. Had the plaintiff rested his case upon the ground that he was a ryot entitled to a right of occupancy, he would have challenged the defendant to prove what was the fair rate of rent according to the plaintiffs' allegation in respect of it. The right to a pottah, which he had upon the ground of his being an occupancy ryot, was a right to obtain a pottah from all the 16-anna shareholders jointly, and not from the 12-anna shareholders separately. If then, the Court allowed the change of character in the suit to be made at all, it ought to have sent back the case to be tried by the first Court upon fresh evidence with the direction that the remaining 4-anna shareholders should be added as party defendants jointly with the 12-anna shareholders. UTHER HOSSEIN v. RAMPHAL ROY, **20 W. R. 75.**

(61)—*Suit for declaration and for rent—Assessment—Withdrawal of one claim—Jurisdiction—Act* VIII (*B.C.*) *of* 1869.—Plaintiff sued (1) for a declaration that certain land was *mal*; (2) for the assessment of rent on it; and (3) for arrears of rent at the rate assessed. The first Court dismissed the suit altogether. On appeal a question was raised whether the suit could lie. Then the plaintiff elected to sue under the Rent law, and wished to abandon his claim, in respect of the last two points, and to ask merely for a declaratory decree that the land was *mal*. But the District Judge held that the suit having been tried under the special jurisdiction created under Act VIII of 1869, he was unable to grant his request. *Held* that, when the claim of the plaintiff had been reduced to a simple claim for a declaration, and therefore to a claim which was undoubtedly within the jurisdiction of the Civil Courts, the Judge was at liberty, and that he ought, notwithstanding that the suit had been originally registered as a suit under Act VIII of 1869, to have proceeded with that part of the case and to have disposed of the appeal as to that only. ANUND MOYEE DOSSEE v. RAYE MONEE DOSSEE, **20 W.R. 14.**

(62)—*Suit for rent—Court can award damages for use and occupation, when?—Rent-law in Bengal, whether applicable to ferry tolls.*—If a landlord sues for rent, a Court cannot award damages for use and occupation, unless an alternative claim for the same is made in the plaint. (21 W. R. 208, 22 C. 752, *F.*) The provisions of the rent-law in Bengal are not applicable to suits relating to ferry tolls. RACHHEA SINGH v. UPENDRA CHANDRA SINGH, **27 C. 239.** (W. R. Sp. No. Act X, Rul. 82, 22 W.R. 334, *D.*; 9 B.L.R. Ap. 14, *Appl.*)

(63)—*Suit for enhancement of rent—Different grounds—Waiver—Pleadings.*—Where, in a suit for enhancement of rent on different grounds, the plaintiff relies only on one of them and the judgment of the Court also rests only on that ground, no inference arises that the plaintiff has waived the other grounds. In such a suit, the plaintiff must not be tied down strictly to his statements; but he must be limited to the case made in the plaint. BONOMALEE CHURN MYTEE v. SHOROOP HOOTAIT, **14 W. R. 60.**

(64)—*Rent—Suit for enhancement—Plaintiff's failure to prove rent claimed—Court's power to give enhancement at some other rate.*—Where, in a suit for enhancement of rent, the

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plaintiff failed to prove that he was entitled to the rent exactly as he claimed it, the Court can give enhanced rent as it thinks right to be paid. BHUGWAN CHUNDER ROY CHOWDHRY v. JEGUR KHAN, **22 W. R. 456.**

(65)—*Enhancement—Plaint—Duty of plaintiff to state substance of claim.*—In a suit for enhancement of rent, it is incumbent on the plaintiff, in his plaint, to state clearly the substance of his claim, that is, he should state that particular mode in which his claim arose as well as the amount of that claim. Thus, where a case was decided as a contention as to enhancement between landlord and tenant, plaintiff cannot be allowed in appeal to rest upon an alleged stipulation in a farming lease, the existence of which he suppressed in the Court below, reserving to him the right of collecting an enhanced rent. HURRO SOONDERY v. MUDDUN MOHUN DUTT, **W. R. 1864, Act X, Rul. 34.**

(66)—*Cause of action—Trial by first Court on merits—Dismissal by lower appellate Court —Special Appeal.*—Where the cause of action for a suit was not put forward in the plaint, but was sufficiently established during the course of the trial by the first Court on the merits, and the suit was decreed, *held* that it was not open to the lower appellate Court to dismiss the suit on the only ground that the plaint did not disclose a cause of action. LALLA MAHTAB ROY v. DEBEE DUTT SINGH, **25 W.R. 204.**

(67)—*Hindu Law—Betrothal—Contract to marry—Revocation by bride's party—Suit for recovery of bride—Suit for damages.*—According to Hindu law, "a betrothment is effected by the bride and bridegroom walking seven steps hand in hand during a particular recital, and the contract is perfected upon their arriving at the seventh step, and may be enforced by the husband, on completion of it. Previous and up to betrothment, the affair rests legally in promise." Assuming that the ceremonies which are alleged to have taken place, though falling short of marriage or even of a complete betrothel, constitute a contract to marry, the only relief claimable by the party complaining of the breach of such contract is by way of damages, and not by specific performance of the contract. A suit brought on the allegation of a perfect betrothal, equivalent to marriage, for possession of the so-called wife cannot be tried and decided by the High Court in special appeal, as if it were a suit for damages on account of breach of contract of marriage. NOWBET SINGH v. MUSSUMAT LAD KOOER, **5 N.W.P. 102.**

(68)—*Failure of suit for establishing adoption—Can plaintiff fall back on right of inheritance.*—A distinct suit for the recognition of an adoption having failed, plaintiff cannot fall back on his right of inheritance. SREE-GOBIND SINGH v. ODIT NARAIN SINGH, **W. R. F.B. 4.**

Variance between Pleading and Proof —*continued.*

(69)—*Suit for establishment of title—Decree on ground of long possession, if valid.*—In a suit for establishment of title, a decree cannot be granted in favour of the plaintiff on the ground of his having been in possession for a long time, for, the Court cannot grant a decree upon a ground not suggested in the plaint or in the issues tried. BHAYGO BIBEE v. MAHOMED WAZIL, **25 W.R. 315.** [*R.*, 2 C. 418.]

(70)—*Plaint—Suit based on title—No proof of title—Proof of possession—Probative value of such proof.*—If plaintiff set up a specific title, and failing to prove that, yet caused it to appear that she had a clear *bona fide* possession from which the Court could infer a good title of some kind, and that the defendants were mere trespassers and wrong-doers, the Court would not shut her out in consequence of the mere form of her plaint. KYLASH KAMINEE DOSSIA v. JUDOO BASHINEE DOSSIA, **22 W. R. 390.**

(71)—*Suit for land—Plea of possession for above twelve years under mokurruree lease—Failure to prove plea—Nature and duration of defendant's occupancy rights from continued possession to be determined.*—In this suit for possession, plaintiff alleged that defendant was holding possession of certain lands of which he the plaintiff, held a lease from the proprietor. Defendant pleaded that the lands were being held by him for over 12 years under a mokurruree lease. Such lease was denied by the proprietor and lessor who was also a party in the suit. The lower appellate Court, observing that the defendant had failed to discharge the burden of proving his mokurruree right which rested on him, and that his mere possession as a squatter could not be given effect to, affirmed the first Court's judgment in favour of the plaintiff. It was contended by the defendant on special appeal that, admitting that he had failed to prove his mokurruree right, still, by reason of his long continued possession as a tenant, he had acquired the right of occupancy, and therefore ought not to have been ejected from the lands. The High Court remanded the case directing findings as to what the nature of the alleged occupancy was and how long it had subsisted, and observing that, if the defendant should be found to have actually attained rights of occupancy by reason of his having held the land for over 12 years, on payment of rent, he ought not to be dispossessed. JORAWUR SINGH v. HAKEEM KHYRAT ALI, **10 W.R. 360.** [*D.*, 12 W.R. 203.]

(72)—*Suit for demolition of building—Claim based on title—Owner—Relief on title by prescription—Pleadings.*—In a suit for the demolition of a pucca building recently erected by the defendant on land lying between the premises of the two contending parties, the case set up by the plaintiff was that the disputed land was his own property and that he had reserved it specially for the purpose of enabling himself to repair his wall when necessary. The Munsif dismissed this portion of the claim

Variance between Pleading and Proof —*continued.*

upon the ground that the plaintiff had given no evidence to support it. No appeal was preferred to the Judge against this portion of the Munsif's decision. In special appeal, it was argued for the plaintiff that the Judge ought to be called upon to state his opinion as to whether the evidence on record was not sufficient to make out a title by prescription in plaintiff's favour. *Held* that, as the plaintiff's claim to use the land in question was expressly put upon the ground of his title as owner, he had no right to fall back upon a title by prescription after having failed to make out the case originally set forth in the plaint. BHOOBUN MOHUN MUNDUL v. RASH BEHAREE PAUL, **15 W.R. 84.**

(73)—*Suit by decree-holder for declaration that property is liable to attachment—Property found not to belong to judgment-debtor—Decree on basis of judgment-debtor having attachable interest—New case for plaintiff—Power of Court —Practice.*—Where, in a suit brought by a decree-holder for a declaration that the plaint property was liable to attachment and sale as property belonging to the judgment-debtor, it was found that the latter was not the owner, but had only an attachable interest in the land as permanent tenant, and the lower appellate Court, on that finding, awarded possession to the plaintiff, *held*, on second appeal, reversing the decree of the lower Court, that its order made an entirely a new case for the plaintiff, which he never made himself at any period of the trial. IRANGOWDA v. SESHAPA, **17 B. 772.**

(74)—*Suit for rent in kind under kabuliat—Dismissal of suit for failure to prove kabuliat—Decree at rate admitted by defendant.*—Where, in a suit to recover Rs. 185-7-3, being the value in money, of arrears of rent for two years which the plaintiff alleged to be payable in produce under a kabuliat executed by the defendants' father, the defendants denied that the rent was payable in produce and alleged that the kabuliat had been set aside, that, under a subsequent arrangement made between the parties, the annual rent payable by them was fixed at Rs. 29, and that the plaintiff had sued them on a previous occasion for rent in money and not in grain, and had obtained a decree at that rate, and the Judge, finding the defendant's case proved, *held* that as the plaintiff had set up a false claim, he was not entitled to a decree and dismissed the suit; *held*, that the plaintiff was entitled to a decree for arrears of rent at the full rate admitted by the defendants. KISHEN MOHUN MOOKERJEE v. RAJOO DEY, **13 B.L.R. 245, Note=19 W.R. 234.**

(75)—*Suit for rent—Kabuliat not proved—Right to decree on admission of defendant.*—In a suit for rent, the plaintiffs failed to prove the kabuliat which fixed the amount of rent and there was no evidence on the part of the plaintiffs to show that they were entitled to the amount at the rate they had estimated it.

Variance between Pleading and Proof —*concluded.*

Held, that they were entitled to recover the amount admitted by the defendants to be due as rent. It would be unreasonable to hold that because the plaintiffs have been guilty of setting up a forged kabuliat, they should be obliged to bring a fresh suit to recover an admitted balance of rent. ROOKHINI KANT ROY v. SHARIKAT-UN-NISSA BIBEE, **13 B.L.R. 246, Note=20 W.R. 64.** [*R.*, 21 W.R. 208=13 B.L.R. 243.]

(76)—*Suit for rent—Admission by defendant of part of claim—Failure by plaintiff to prove entire claim—Decree.*—A landlord suing for rent at a specified rate, but failing to prove his claim for more than what is admitted to be due by the defendant, is entitled to have a decree for the amount admitted, but the suit is not liable to be dismissed. HULODHUR SEN v. SEETUL CHUNDER BHOOMICK, **23 W.R. 85.**

(77)—*Rent in kind—Right of suit.*—Where a defendant admitted that he owed rent at a certain rate in money to the plaintiff, but denied that he was bound to pay rent in kind amounting in value to the sum which the plaintiff claimed, *held*, that the plaintiff was entitled to recover arrears of rent to the amount admitted by the defendant. MUSSAMUT BIBEE JAN v. BHAJUL SINGH, **21 W.R. 438.** [*F.*, 6 C.L.J. 369; *R.*, 1 A. 217; 6 C.L.J. 727.]

(78)—*Suit for rent—Rate—Assessment by Revenue Officer—Act* VI *of* 1862 (*B.C.*), *s.* 10.—Where plaintiff sued for rent at the rate fixed by the Revenue Officer acting under s. 10, Act VI of 1862 (B.C.), and the claim was dismissed on the ground that that Officer had no power to assess rent, *held*, that, where the claim was not in the alternative no decree at the rate previously paid could be passed in favour of the plaintiff. DWARKANATH BOSE v. RAM LOCHUN BOSE, **23 W.R. 465.**

See APPELLATE COURT — OBJECTIONS FIRST TAKEN IN APPEAL, 22 W.R. 216.

See CIV. PRO. CODE, 1908, O. XII, r. 23, 109 P.R. 1887.

See HINDU LAW—JOINT FAMILY, 1 Agra 255.

See LANDLORD AND TENANT—EJECTMENT, 17 B. 631.

See LANDLORD AND TENANT—RELATIONSHIP OF LANDLORD AND TENANT, 22 W.R. 346.

See PRACTICE AND PROCEDURE, 15 M. 489=2 M.L.J. 257.

Fraud as originally specified in pleadings, party bound to prove—Amendment of pleadings, when permissible—*See* RIGHT OF SUIT —MISCELLANEOUS, 11 B. 620, P.C.=14 I.A. 11.

See WITNESS—WEIGHT TO BE ATTACHED TO EVIDENCE, 18 W.R. 523.

Vatan.

(1)—*Vatan — Construction of sanad.*—A sanad under which the Government agreed to continue a *vatan* to a family contained a clause which ran as follows: "The said lands and cash allowances shall be continued without demand of service, and without increase of land tax over the above fixed amounts, and without objection or question on the part of Government as to the rights of any holders thereof, so long as any male heir to the *vatan*, lineal, collateral or adopted, within the limits of the *vatandar* family, shall be in existence." *Held*, on a construction of the above clause, that it does not limit the succession to the male heirs only, because it merely relates to the continuance of inheritance in force in the family of the *vatandar*. GOVIND v. SITABAI, **2 Bom. L.R. 23.**

(2)—*Deshgat—Desai, property appertaining to the office of—Impartibility—Special tenure.*—Deshgat vatan or property held as appertaining to the office of Desai is not to be assumed *prima facie* to be impartible. The burden of proving impartibility lies upon the Desai; and on his failing to prove a special tenure, or a family or district or local custom to that effect, the ordinary law of succession applies. VINAYAK v. GOPAL, **5 Bom. L.R. 408=27 B. 353.**

(3)—*Maharki.*—A Civil Court has no jurisdiction to entertain a suit brought by Mahars for a declaration that they are entitled to a share in the Maharki vatan and for an injunction restraining the defendants from obstructing them in the enjoyment of the said share. BHIVA v. VITHYA, **2 Bom. L.R. 869=25 B. 186.**

(4)—*Vatan property, mortgage by holder of life-interest in Reg. XVI of 1827—Descent of interest to mortgagor's son, effect of, on mortgage.*—Property, constituting *choudari, sardeshmukhi* and *kulkarnivatan*, was not liable for the debts of the last holder. So where the holder of such *vatan* property had mortgaged it and the mortgagee had obtained a decree thereon but, the mortgagor dying, his son and heir succeeded to the estate on the ground of his father, the previous incumbent having had only a life-interest in the *vatan*, it was *held* to have come into the hands of the son free of the mortgage. JAGJIVANDAS JAVERDAS v. IMAD ALI, **6 B. 211.**

(5)—*Mortgage of—Death of one of the mortgagors—Arbitration award—Decree in terms of the award—Deceased mortgagor's son joined as his representative—Execution—Construction.*—Two brothers, V and D, mortgaged their *vatan* property to B. D having died after the mortgage, B got an arbitration award for the payment of the mortgage debt. D's son N who was then a minor was joined as one of the parties to the award as the representative of his deceased father with his uncle V as his guardian. Afterwards a decree in the terms of the award was passed. At the time of the decree N had become a major. The provision for the payment

Vatan—*concluded.*

of the mortgage debt was in the following terms:—"If money should not be paid according to this award the lands given in writing in mortgage * * * from the said lands and from the settled rent money and from other properties and also personally from the defendants the plaintiff is to recover the money claimed annually as mentioned above by recourse to execution." After the passing of the decree in the terms of the award V also having died B sought to execute the decree by sale of the *vatan* property against the heirs of V and N as the representative of his deceased father. N contended that the *vatan* property in his hands was not liable as the assets of his father. *Held*, that the award was not passed against N in his personal capacity and the decree which was framed in the terms of the award was not a personal decree which could be executed by sale of N's interest in the *vatan* nor was that interest assets of D's estate. NARAYAN v. RAMRAO, **3 Bom. L.R. 482.**

Alienation of—property, what is—*See* BOM. ACT III OF 1874, s. 10, 5 B. 293, F.B.

Attachment of profits of—Removal of, on Collector's certificate—*See* BOM. ACT III OF 1874, s. 10, 4 B. 426.

Act III of 1874, Vatandars, s. 5—Mortgage by holder of service—Lands, whether could be impeached as illegal by such holder himself—Estoppel — *See* ESTOPPEL — ESTOPPEL BY CONDUCT, 14 B. 404.

Vatan service, alienability beyond life-time by Will—Effect of change in tenure rendering it alienable—*See* HINDU LAW—INHERITANCE, 10 B. 372.

Emoluments of Shetsandi vatan—*See* LIMITATION ACT, 1908, art. 62, 10 B. 665.

Suit for share of income of—*See* LIMITATION ACT 1908, art. 132, 5 B. 69.

See LIMITATION ACT, 1908, art. 144, 9 B. 198, F. B.

See PARTITION—SUITS FOR PARTITION, JURISDICTION OF CIVIL COURTS IN, 18 B. 516.

Alienation of—Property. *See* BOM. REG. XVI OF 1827, s. 20, 5 B. 435.

Holder of vatan, competency of, to create perpetual mutalik—Vatandar, whether could exclude his successors from entire management—*See* SERVICE TENURE, 14 B. 82.

Vatandar Joshi.

See INJUNCTION—SPECIAL CASES, 3 B. 232.

Vatandars.

(1)—*Property of—Bombay Regulation XVI of 1827—Bombay Act III of 1874—Gordon Settlement—Mortgage—Watandar de facto—Female watandar—Heir of the last male watandar—Acquiescence—Limitation.*—B a *vatandar* died on the 27th September 1847, leaving two widows, K and R. The senior widow K was

Vatandars—*continued.*

childless, and R had a son P, the appellant, born on the 15th September 1848. After B's death and before P was born, the Revenue authorities placed the *vatan* under sequestration; and it so remained till the 10th August 1863, when the *vatan* was settled upon K, under Gordon Settlement. On the 15th September 1865, K made the mortgage in dispute of the *vatan* to the father of the respondents. Litigation ensued between K and her mortgagee, with the result that on 31st August 1875, the father of the respondents was placed in possession of the property. K died in November 1877. P commenced the present suit on the 16th August 1887 praying, *inter alia*, that the villages in suit being in the nature of *vatan* property the mortgage was not binding after the death of K and also asked for possession: *Held*, (1) that the decision in *Kalu Narayan* v. *Hanmapa* (I.L.R. 5 Bom. 435), that a mortgage by a *vatandar* of *vatan* property executed in 1871 when Regulation XVI of 1827 was still in force was in its inception void against the heir of the *vatandar*, and did not become validated against the heir by reason of the repeal of that Regulation by Act III of 1874 (Bombay), was directly applicable to the present case; (2) that assuming that the appellant was barred by limitation from recovering the lands as heir of his father from those claiming under K and consequently his title as *vatandar* from his own birth was extinguished, yet that circumstance did not alter the tenure. The lands remained *vatan*, and K was *vatandar de facto* with all the rights and subject to all the restrictions incident to that tenure: consequently, she could not make any alienation which would be valid against her own heir; and (3) that though the appellant's earlier title be extingusihed by limitation, there was nothing to preclude him from asserting his title as K's heir; (4) that if the mortgage was void against the appellant and not merely voidable, no amount of acquiescence short of the period of limitation would give it validity as against the appellant. PADAPPA v. SWAMIRAO, **2 Bom. L.R. 548=24 B. 556.**

(2)—*Adoption—Consent of kinsmen or Government.*—The consent of the Government or of the *bhau bandhs* is not essential to the validity of an adoption among *vatandars*. *Per Batty, J.*—So far as lands held *pro servitus impendendis* or *pro servitus impensis ed impendenais* are concerned, Government can determine the conditions on which they should be continuable or determinable. But while reserving this power to Government the legislature seems to have left the devolution of interests among the members to whom they are continuable, to be determined by the ordinary law governing the community to which these members belong. If that ordinary law recognizes an unrestricted right of adoption, the power given to Government of deciding, as to the conditions of continuance, has no operation on that right so long as these conditions of continuance remain

Vatandars—*concluded.*

satisfied. BALAJI v. DATTO, **4 Bom. L.R. 762 =27 B. 75.**

(3)—*Vatandar, adoption by—Widow of a person other than the last male holder—Adoption by such a widow—Male holder of the family.*—A *vatan* belonged to two brothers R and B. At B's death R became the last male holder; and on his death his widow L held the *vatan* till her death in 1892. Upon her death, B's widow T adopted the plaintiff in 1893, who now filed a suit against the defendant to whom the *vatan* had passed on the death of L as a male member of the family:—*Held*, that the plaintiff was not entitled to succeed, because where there is a male member qualified to inherit, he inherits, and a widow other than a widow of the last male owner acquires no rights by succession or inheritance and consequently she cannot create, transfer or revive any right by adoption. KRISHNAJI v. TARAWA, **2 Bom. L. R. 276= 24 B. 484.**

See BOM. ACT III OF 1874, s. 4, 21 B. 787.

Daughter not a vatandar—*See* BOM. ACT III OF 1874, s. 5, 1 Bom. L.R. 206=23 B. 715.

Family of vatandars—Suit for declaration of capacity to be representative—Whether maintainable in Civil Court—*See* BOM. ACT III OF 1874, s. 25, 22 B. 344.

See GRANT—CONSTRUCTION, 12 B. 80.

Questions regarding perquisites from raiyat to vatandar kulkarni, jurisdiction of Civil Court to try, not affected by Bombay Act III of 1874—*See* JURISDICTION OF CIVIL COURTS, 12 B. 278.

See JURISDICTION OF CIVIL COURTS, 4 B. 254, 8 B. 25.

Vatan Property.

(1)—*Alienation by the holder enures for his life-time—Suit by alienor's heirs to set aside alienation — Limitation Act* (IX *of* 1908), *s.* 21.—V and D, joint *vatandars* of certain *vatan* lands, alienated them to defendants 1—3 in 1872. D died shortly after and V died on the 26th April, 1893. Within twelve years of this date V's sons sued to recover possession of the lands from the defendants: D's sons were joined as party defendants (defendants 4, 5). The plaintiffs alleged that, at a partition between V and D, the whole of the *vatan* lands had fallen to the share of V. The first Court found the partition not proved and awarded plaintiff's claim to the extent of half the lands. On appeal, the defendants Nos. 4 and 5 claimed that, on the findings of the first Court, they should be awarded possession of the other half of the *vatan* lands. This was allowed on appeal: *Held* (1) that time for the purposes of suit ran from the death of V, the survivor of the two *vatandars*. (2) That defendants Nos. 4, 5 are entitled to a moiety in the *vatan* lands in right of their father. (3) That, in putting forward their claim, they were not barred by any

Vatan Property—*concluded.*

provisions of the Limitation Act, 1908. The fact that *vatan* land is attached to the office deprives it of some of the incidents which would attach to it, if it were ordinary land in the possession of a Hindu family. A *vatandar* is entitled to alienate the *vatan* land for the term of his natural life, and his children, although not separate in interest from him, have no right to object to such alienation until after his death. NARASINHA KRISHNAJI v. VAMAN VENKATESH DESHPANDE, **11 Bom. L.R. 1102 =34 B. 91=4 Ind. Cas. 249.**

Suit for declaration that plaintiff is nearest heir to deceased *vatandar*—Jurisdiction—*See* BOM. ACT III OF 1874, s. 36, 11 Bom L.R. 1339=34 B. 101=4 Ind. Cas. 833.

See HINDU LAW—CUSTOM, 4 B. 494, P.C. =7 C.L.R. 1=7 I.A. 162.

Patilki Vatan—Suit by reversioners—Limitation—*See* HINDU LAW—INHERITANCE, 12 Bom. L.R. 204=5 Ind. Cas. 964=34 B. 321.

Attached by Peshwas — Continuance of attachment under and subsequent resumption by British Government—Possession by defendant as tenant to Government, if adverse—Plaintiff's incompetency to sue during attachment and resumption—*See* LIMITATION ACT, 1908, art. 144, 8 B. 585.

Vehicle Tax.

See MADRAS ACT I OF 1884, sch. B, 19 M. 83 =4 M.L.J. 293.

Vendee.

Resale by, to vendor, whether could affect a pre-emption decree — *See* PRE-EMPTION — RIGHT TO PRE-EMPT, 2 N.L.R. 150.

Vendor and Purchaser.

1.—GENERAL.
2.—BILLS OF SALE.
3.—BREACH OF COVENANT.
4.—BREACH OF WARRANTY.
5.—COMPLETION OF TRANSFER.
6.—CONSIDERATION.
7.—FRAUD.
8.—INVALID SALES.
9.—LIEN.
10.—NOTICE.
11.—POSSESSION.
12.—PURCHASE OF MORTGAGED PROPERTY.
13.—PURCHASE MONEY AND OTHER PAYMENTS BY PURCHASER.
14.—PURCHASERS, RIGHT OF.
15.—VENDOR, RIGHTS AND LIABILITIES OF.
16.—MISCELLANEOUS.

See BENAMI TRANSACTION.

See PRE-EMPTION.

See SALE.

Vendor and Purchaser—continued.

——1.—General.

(1)—*Prior and subsequent purchases—Suit by prior purchaser against subsequent purchaser—Right of pre-emption whether valid plea—Cross-suit.*—Certain land owned by the first defendant was mortgaged to the other defendants and certain others. The first defendant conveyed this land by registered deed to the plaintiffs, the deed providing for the payment of the mortgage-debt to the mortgagees. Subsequently, the first defendant conveyed the same land to the mortgagees by registered deed expressly mentioning the prior conveyance to the plaintiffs. The present suit was instituted by the plaintiffs against the vendor and the mortgagees to recover possession of the land conveyed to them. In their plaint, they alleged a previous tender, at the proper time, of the mortgage-money to the mortgagees and a refusal by them to accept the tender. The mortgagees in their answer challenged the validity of the plaintiff's conveyance and relied upon the conveyance to themselves, but they did not traverse the allegation of a tender of the mortgage-money. Two of the defendants subsequently raised the plea that they were entitled to a right of pre-emption over the lands conveyed at its market value. *Held* that such plea was no answer to the plaintiff's suit, and was therefore inadmissible, the proper course being for such defendants to bring a cross-suit to enforce the right claimed. PERTAB SINGH v. RATTAN SINGH, **32 P.R. 1884.** (67 P.R. 1881, *R.*). [*R.*, 37 P.R. 1908=39 P.L.R. 1908=30 P.W.R. 1908.]

(2)—*Sale by one of several co-sharers—Sowing of corps by purchaser—Suit for pre-emption—Rival claims of purchaser and pre-emptor to crops.*—When a transferee of immoveable property believing in good faith that he is absolutely entitled thereto, has planted or sown crops on the property, and is subsequently evicted therefrom, by a person having a better title, he is entitled to such crops if they are growing on the property at the time of his eviction; and where he has received possession of the produce of the crops before his eviction, and *a fortiori*, according to the principle above stated, he will be entitled to retain it. In this case, the Chief Court followed the rule contained in s. 51 of the Transfer of Property Act (IV of 1882), though the Act was not in force in the Punjab, as they thought that the rule was equitable and was in accordance with practice, which in the absence of express agreement to the contrary, usually obtained in the province, when the right to possession of cultivated land was transferred from one person to another. BAKIR ALI v. BELI RAM, **36 P.R. 1883.**

(3)—*Sale—Covenants by vendor—Pre-emption—Decree against purchaser in suit by pre-emptor—Vendee's right and vendor's liability*—"Digar dawedar."—Where, shortly after the defendant sold to plaintiff a house purchased by herself recently, and covenanted for title and contracted that she would indemnify the plaintiff against any loss that might arise by

Vendor and Purchaser—continued.

——1.—General —*continued.*

reason of the bargain being annulled at the instance of any one, including a pre-emptor (67 P.R. 1881, 4 A. 357, *D.*), a third person brought a suit for pre-emption against the original vendee and the parties to the present suit and obtained a decree for possession, *held*, that the plaintiff (purchaser) was entitled to recover from the vendor (defendant) the loss sustained in the transaction. The words "*digar dawdar*," in one of the clauses in the vendor's contract on which the vendee relied, being very wide, they included a person claiming property by right of pre-emption. KHONMON BIBI v. SHAH MALI, **111 P.R. 1908.**

(4)—*Decree against purchaser on a mortgage previous to sale —Vendor cannot maintain suit to set aside.*—Plaintiff, who had sold a shop to certain persons, sued to set aside a mortgage, on which the defendant had previously brought an action and obtained a decree against those persons, and to have the shop exempted from the effect of the decree. It was before the said previous suit brought by the present defendant, on his mortgage, that the plaintiff had made his sale to his vendees and had covenanted with them that he had a good title. In the present action, to which the plaintiff's vendees were not parties, he claimed to set aside the mortgage and decree, on the ground that the mortgage was fraudulent and that, as he was liable on his covenant, he was entitled to maintain this action. It was held that the instrument of mortgage had merged in the decree and this action was not maintainable, unless the plaintiff was entitled to have the decree in the prior suit set aside. By the sale, he had parted with all his interest in the property before the institution of the prior suit, and had no manner of right to the property enabling him to maintain the present action questioning the above decree that had been passed in a properly instituted suit, in a previous litigation and against parties interested at the time. THUNA v BENI RAM, **9 A. 439 = A.W.N. 1887, 75.**

(5)—*Mortgage—Rights and position af vendee of a share in joint mortgaged property when it is redemeed in part or whole by his money—Amendment of plaint in further appeal.—Held*, that when a vendee of a share in a joint property already mortgaged by all its owners redeems whole of it by his own money, he steps into the position of the original mortgagee, in respect of the shares of the other co-sharers, and acquires a charge thereon, and that the co-sharers have no right to take possession of their shares without paying, to the vendee their quota of the mortgage-money. *Practice* —Under the circumstances of this case, plaintiff was allowed to amend his plaint in further appeal. FAZAL DIN v. BUDHA, **64 P.W.R. 1908.**

(6)—*Sale of equity of redemption—Prior sale —Mutation of names— Notice—Acquiescence.*—

Vendor and Purchaser—continued.

——1.—General—*continued.*

Held, that, finding a fact *prima facie* against the record is a material irregularity within the meaning of s. 70 (*a*) of Act XVIII of 1884. *Held*, also, that a subsequent vendee acquires no title by purchasing a property from the vendor, who has already parted with all the interests therein. **Imam Din v. Shah Din, 40 P.W.R. 1910 = 6 Ind. Cas. 642.**

(7)—*Deed of purchase represents a real transaction to be proved.*—A person suing in ejectment, under a deed of purchase, must prove that the deed represents a real transaction under which he has obtained the title of his vendor and is not a mere sham conveying no right at all. ANANT v. SADASHIV, **1 Bom. L.R. 58.**

(8)—*Distinction between vendor's suit and purchaser's suit for—Specific performance.*—There is a distinction between a vendor's suit and a purchaser's suit for specific performance. LAND MORTGAGE BANK v. SUDURUDDEEN AHMED, **19 C. 358.** (2 C. 445, 5 C. 82, *R.*

(9)—*Contract of sale—Specific performance.* —Suit for possession of a four-anna share of a Raj and Zemindary under a *kobala* or bill of sale, purporting to be an absolute sale for the sum of Rs. 75,000 executed at a time when the alleged vendor was neither in possession nor had established his title to the Raj and Zemindary. The vendor, who had established his title to the Raj, and was in possession, by his answer set up this case—that, being in want of money to carry on suits to recover the Raj and Zemindar, he applied to one K (whose rights had become vested by purchase in the plaintiff) who agreed to make advances to him on condition of his executing the bill of sale, and that no part of the consideration money there expressed was paid on execution of the bill of sale, though some inconsiderable advances were made to him ; that he was afterwards pressed to execute a bond to secure the sum of Rs. 75,000 hypothecating the whole Raj and Zemindary in substitution of the bill of sale, but that no consideration was paid on that occasion, the real contract being one to secure moneys already advanced and future advances, which contract had not been complied with by K's assignee. *Held* by the Judicial Committee on the evidence, that, the real arrangement between the parties was for K to make advances, from time to time, and that the form of the contract was a device adopted to evade the effect of the transaction being stamped with the character of champerty and that the bill of sale must therefore be set aside. In a suit so framed to obtain possession, the appellate Court will not impose terms upon the defendant to repay the advances made by K, as the plaintiff, his assignee, had his remedy and could sue on the bond. It is very questionable in any case whether the effect of the execution of a bill of sale by a Hindu vendor is to pass an estate

***Vendor and Purchaser*—continued.**

——1.—General—*continued.*

irrespectively of the actual delivery of possession. RAJA SAHIB PRAHLAD SEN v. BABOO BUDHU SINGH, **2 B.L.R.P.C. 111=12 M.I.A. 275=12 W.R.P.C. 6=2 Suth. P. C. J. 225=2 Sar. P.C.J. 429.** [*F.*, 21 W.R. 101, 6 B. 380, F.B., 9 C. 744, F.B., 15 C. 89; *Appl.*, 9 C. 125; *Rel. on*, 30 C. 265; *Commented on*, 23 W.R. 131; *Expl.*, 2 B. 299; 3 C.W.N. 763; *R.*, 12 W. R. 217, 7 B.H.C.A.C. 4, 18 W.R. P.C. 140, 20 W.R. 446, 1 C. 297, 10 A. 133=8 A.W.N. 35, 7 C. 753, 8 C. 597, F.B.=10 C.L.R. 241, 8 C. 923, 6 B. 645, 6 M. 404, 10 C. 1087, 11 C. 121, P.C., 9 B. 324, 11 A. 57=8 A.W.N. 296, 13 M. 60, 2 O.C. 149, 12 A. 234, 5 C.L.J. 413; *D.*, 17 W.R. 238, 11 A. 118.]

(10)—*Sham transaction—Sale-deed, acted upon, effect of.*—Where it is established that the sale deed was not intended to be a sham transaction, and that it was even acted on to some extent, *held*, that it conveyed the property, though the deed was in vendor's possession. AMIRTAMMAL v. PERIASAMI PILLAI, **5 M.L.T 256=32 M. 325=4 Ind. Cas. 507.**

(11)—*Contract of sale—Liability of vendee to pay interest on the consideration money.*—An agreement of sale provided for the payment of the consideration on a particular date and for the execution of the conveyance on the date of such payment. By a collateral agreement it was stipulated that, if payment was not made on the day specified, interest was to be paid at one *per cent. per mensem* from the due date. The vendor however was not able to give a good title to the property until long after the appointed day, as he had to institute a suit for clearing his title. *Held*, that the vendee's obligation to pay interest and the vendor's obligation to execute a valid sale-deed are mutually dependent, and that interest was payable only from the date on which the vendor could give a clear title. ADUSUMILLI SINGARAYUDU v. SAYANI NARAYANASAMI, **(1912) M.W.N. 915=17 Ind. Cas. 273.**

(12)—*Vendor without title at the time of completing the agreement—Purchaser not bound to wait indefinitely.*—Where, by an agreement of sale, dated 6th January, 1910, the vendor agreed to sell a building site and received an advance, and the purchaser was to pay the balance two months later, but it was found that, on the day fixed for the completion for sale, the vendor had no land to deliver as he had not obtained any conveyance from the former owner till the 23rd March. *Held*, (1) that the purchaser was justified in not tendering the balance within the stipulated period, as the vendor was admittedly not in a position to convey until 17 days after the expiry of that period; (2) that the purchaser was also entitled to treat the contract as at an end, as the vendor was without a valid title when the period fixed for completion had expired; (3) that the fact the purchaser gave the vendor a few days' grace did not deprive him of his right to rescind the

***Vendor and Purchaser*—continued.**

——1.—General—*continued.*

contract afterwards. E. S. COHEN v. MG BA CHIT, **14 Ind. Cas. 811.**

(13)—*Condition that if any one lays claim and dispossesses purchaser, purchase-money would be refunded—Attachment of property by third party in execution of decree against vendor——Claim by purchaser—Dismissal of claim—Suit for purchase-money—Cause of action.*—In a sale-deed, there was a condition that, if, in future, any one would lay claim to the property and dispossess the purchaser, then the vendor would refund the purchase-money with interest. A third party attached the property in execution of a money-decree obtained against the vendor. Thereupon, the purchaser laid a claim which was dismissed. He did not bring a suit to establish his title but brought this suit against the vendor to recover the purchase-money under the proviso in the sale-deed. *Held*, that the condition provided for in the deed did not arise and the suit should be dismissed. TASSUDUK HOSSAIN KHAN v. ABTAB HOSSAIN KHAN, **15 Ind. Cas. 334.**

(14)—*Practice — Suit for accounts—Vendor leaving money with vendee to pay to creditors of vendor—Failure to pay—Preliminary decree for account-Defendant to begin while giving accounts.*—Where, at the time of the execution of a sale deed, a portion of the consideration was left with the vendee to be paid by her to the vendor's creditors and the vendee failed to do so, in a suit by the vendor for the sum alleged to be still in the hands of the vendee, *held* that the plaintiff was entitled to call upon the defendants for an account of the money left in her hands, notwithstanding that the plaintiff asked for a decree for a definite sum; and the Court should have passed preliminary decree directing accounts to be taken and then calling upon the defendant to begin the case. ABADI BIBI v. ILAHI BAKSH, **11 A.L.J. 152=18 Ind. Cas. 336.** (32 M. 446, *R.*)

(15)—*Goods not according to contract—Sale falling through—Duty to return the goods—Expenses of returning.* — Plaintiff agreed to supply defendants with stone for building purposes at Karnal. The stone was delivered at Karnal, but on examination it was found to be unsuitable for the purpose for which it was supplied. Defendant sued plaintiff for recovery of price and damages, and obtained a decree. Then plaintiff filed the present suit against defendant, asserting that it was the latter's duty to return the stone to him. *Held*, that the plaintiff had no cause of action and that defendant was not bound to put himself to the expense and trouble of returning the stone, that it was sufficient for defendants to notify to plaintiff that the stone was lying at Karnal at his risk, and that it was the business of the plaintiff to take the stone away if he was so minded. PHAGGU MAL v. BABU LAL, **11 A.L.J. 315=35 A. 325=19 Ind. Cas. 254.** (L.R.O.P. 391, *F.*)

***Vendor and Purchaser*—continued.**

—1.—General—*continued.*

(16)—*Advance—Time of the essence—Contract Act, ss.* 64, 65 *and* 74—*Return of deposit—Breach of contract.—White, C J. and Miller, J.:—(Sadasiva Iyer, J., Diss.)*—In a contract between a vendor and purchaser where a sum is paid as deposit by the purchaser by way of guarantee or security for the performance of the contract of sale and time was of the essence, the purchaser, if he fails to be ready with the purchase money at the essential time, cannot recover back the deposit. Where the deposit bears a small reasonable proportion to the price, it can be regarded as a security which is liable to forfeiture if such stipulation exists. S. 65 or s. 74, I.C.A., does not apply to such deposits. *White, C.J.*:—If the purchaser repudiates the contract, the vendor may retain the deposit. If, where time is not of the essence of the contract, the vendor rescinds after the agreed date, it is for the purchaser to show that he was ready and willing to perform the contract, within a reasonable time after the agreed date. If time is not of the essence of the contract, failure to perform on the agreed date does not in itself amount to repudiation, but express intimation by the purchaser that he repudiates his contract is surely not necessary. And if the party in default fails to fulfil his contract on the agreed date, the *onus* is on him to show that he did not intend to repudiate. *Sadasiva Iyer, J.*:—As regards the enunciation of the general universal principles of the Law of Contracts, the Contract Act was intended to be as exhaustive as possible. Stipulations for forfeiture of deposit money are governed by the I.C.A. In a breach of contract, the distinction between penalty and liquidated damages has been abolished by the Indian Contract Act, and Courts have got full power to do equitable justice between the parties. Money received by a vendor under a rescinded contract of sale (properly rescinded by the vendor) should be returned to the purchaser, leaving the rescinding vendor to recover damages from the purchaser for his breach of the contract. NATESA AIYAR v. APPAVU PADAYACHI, **(1913) M.W.N. 341=24 M.L.J. 488=13 M.L.T. 391=19 Ind. Cas. 462.**

(17)—*Property sold to different vendees by halves—Suits for possession—Decrees in favour of vendees—Pleadings—Vendor proved to be owner of one half share only in the property.*—In 1902 D sold to B one half-share in a shop and one half-share in a house alleging that the shop and the house belonged to him. B sued for possession and obtained decree in respect of the one half-share purchased by him. D, subsequent to the sale to B, sold the other half of the shop and the house to M. In 1908 M obtained a decree against B for possession by partition of half the shop and the house. B in 1909 sold his half to M.R. It appeared that D was only entitled to half-share in the property sold. M. R. sued for possession but the Court gave him decree for the refund of his purchase money. *Held*, that M. R. as representative of B was entitled to possession of the share purchased by B and subsequently transferred to him, and that M.R. was not debarred from suing by the decree which M had obtained against B, for in that suit M had admitted B. as owner of the other half and he only claimed that his one-half share should be separated from that of B. MANGHA RAM v. DITTA, **19 P. L.R. 1913=77 P.W.R. 1913=18 Ind. Cas. 834.**

(18)—*Estoppel—Vendor denying his title—Possession not permissive—Evidence Act, s.*115—*S.* 70 (*a*), *Act* XVIII *of* 1884.—*Held*, that it is a finding of fact that possession is not permissive and consequently cannot be questioned in revision. *Held*, also, that a person selling a property is not estopped from denying the correctness of his title so far as the claim of a third person is concerned, but such a vendor is not to be trusted when he is playing the vendee false by supporting that claim. SHAM SINGH v. PREM SINGH, **260 P.W.R. 1912=17 Ind. Cas. 508.**

(19)—*Portion of price left with vendee to clear encumbrances—Rights of vendor.*—Certain property was sold by a private sale. The property was subject to a mortgage and a sum of money was left in the hands of the purchaser for the purpose of redeeming the mortgage, but the amount due on the mortgage was in excess of the amount left in the hands of the purchaser. The mortgagee instituted a suit for sale and in execution sold the property which fetched a smaller sum than was left in the hands of the purchaser. In a suit by the vendors against the purchaser for recovery of the difference between the amount left in the hands of the purchaser and the amount the property fetched at the auction sale, *held* that the plaintiffs, after a decree had been passed on the mortgage, should have paid into Court the difference between the amount due and the amount left in the hands of the purchaser, and then have called on the defendant to pay the sum which was in his hands. It was the duty of the vendors to give a clear title to the purchaser, subject only to the payment by purchaser of the sum left in his hands. BADRI DAS v. JIVAN LAL, **10 A.L.J. 480=15 Ind. Cas. 854.** (21 A. 223, P.C., *F.*)

(20)—*Vendor's lien—Waiver—Express or implied—Direction to pay purchase money to stranger—Remission by third party—Agent not bound to render account to principal—Suit for recovery of purchase-money—Non-execution of conveyance—Pleadings—Damages.*—A person, who directs another to pay money to a third person, is entitled to countermand that order, before that person has entered into direct relations with the third person and agreed to pay it to him. But where an agent is directed or authorised by his principal to pay to a third person money existing or accruing in his hands to the use of the principal, and he expressly or impliedly contracts

***Vendor and Purchaser*—continued.**

——1.—General—*continued.*

with such third person to pay to him, or to receive or hold the money in his behalf, or for his use, as the case may be, even if he had fresh instructions from the principal not to pay to such third person and if the person entitled to the payment excuses a portion of the amount in favour of the person directed to pay to him, that is a benefit derived by the latter from the creditor for which he is not bound to account to the person by whom he is directed to make the payment. Where a vendee admits non-payment of consideration in terms of the bond, the *onus* is on him to show that it was subsequently paid. A vendor's lien can be lost only by an express or implied contract of waiver. A vendor, who has directed the purchase money or a portion thereof to be paid to a third party, must be taken to have waived, by a contract necessarily implied from his conduct, the right to a lien for any portion of the money to be paid to the third party under the agreement. (31 C. 57, P. C., 29 M. 305, 7 M.L.T. 376, *R.*) There is a clear legal distinction, though a fine one, between a vendee owing money to the vendor being directed to pay it to a stranger and a person being entrusted with another's money to be paid to a stranger. In the one case the money is received and kept by the person who is to make the payment as agent. In the other it is merely an obligation that he is bound to render and which he has been authorised to render to a third person. In a suit framed for the recovery of a portion of the consideration alleged to have been paid for sale of a village, relief will not be granted by way of damages for non-execution of the conveyance, because the suit was not framed as one for damages, in which case other defences might have been open to the defendant. SIVA SUBRAMANIA MUDALIAR v. GNANASAMBANDHA PANDARA SANNADHI, **21 M.L J. 359.**

(21)—*Defendant a* bona fide *purchaser without notice of plaintiff's claim or means of ascertaining it—Defendant not taking any steps to search Registration office—Defendant cannot plead due diligence.*—The defence in this case was two-fold. First, the plaintiffs were put to strict proof of their title; secondly, defendant said he was a *bona fide* purchaser without notice of plaintiff's claim or means of ascertaining it. *Held*, on the evidence, that the plaintiffs had proved their purchase. *Held*, also, on the evidence, that the defendant never took any steps to search the Registration office at all, and that, if he had done so, he would have found that his vendor was not the owner of the land; and that, therefore, he cannot be heard to say that he took reasonable steps to ascertain that his vendor had power to sell. B. RUNGASAMY NAIDU v. MADURAY PILLAY, ROY BAHADUR, **14 Bur. L.R. 337.**

(22)—*Specific performance of contract of sale of land—Title is doubtful if third parties claim*

***Vendor and Purchaser*—continued.**

——1.—General—*continued.*

an interest in land—Discretionary power of Court—Only parties to the contract can be parties to the suit—Title by the head of a joint Hindu family is doubtful without the concurrence of all co-parceners.—In a suit by vendor for specific performance, only the parties to the contract can be made parties to the suit. Where doubt is thrown upon a title owing to strangers making claims upon the property, the truth or falsehood of which can only be ascertained in a litigation between those strangers and the vendor, that doubt cannot be resolved in a suit for specific performance. In determining whether a title is so doubtful that a Court of Equity will not enforce it upon a purchaser, the ground of that determination must be the state of facts existing at the time the suit was brought. The quality of a title is to be investigated as at the time, it was last offered to the purchaser. If, at the time, there were facts in controversy between vendor and purchaser, of a kind which might be ascertained in an enquiry between them alone, then, the quality of the title is found, not as when it was last offered, but was when the enquiry has been made. Still, the quality of the title, though the Court can only declare it after the enquiry, was potentially the same as between vendor and purchaser, when last offered. That is not the case when, in order to clear the title, the claims of third parties have to be investigated and separate suits filed and decided. When the question between vendor and purchaser is, whether a title is good, bad or doubtful, the Court has to decide between those parties to which category the title is to be assigned. Where the question turns upon the general law or the construction of particular instruments, the Court is in a position to declare the title good or bad. But, whether the title is good or bad, where there is reasonable probability that, forcing it on the purchaser, it will involve him in litigation, the Court ought not, in the exercise of its discretion, to force it on an unwilling purchaser. Wherever a title is challenged and the challenge can only be met by the proof or disproof of facts, peculiarly within the knowledge of strangers to the contract, and, where they are the only persons who can lay all the proofs adequately before the Court, the title is, to that extent, doubtful. No title offered by the head of a joint Hindu family, or a family in which, whether in fact joint or not, claims are put forward by members to the property as ancestral, could be good enough to be forced on an unwilling purchaser, unless all the co-parceners concurred. (10 Bom. 528, *Criticised*). *Quære*—Whether the law of alienation applying to the *Khojas* is settled. AHMEDBHOY HABIBBHOY v. SIR DINSHAW M. PETIT, **11 Bom. L.R. 545 = 6 M.L.T 200.**

(23)—*Counterpart by vendee subsequent to sale, effect of—Personal covenant of vendee with*

Vendor and Purchaser—continued.

——1.—General—*continued.*

one of the vendors, whether assignable.—First defendant, who purchased certain property from defendants Nos. 2 to 4, subsequently, executed to the 2nd defendant alone a certain counterpart deed undertaking thereby to re-sell the property to that defendant on his repaying the purchase-money. The 2nd defendant assigned his rights under the counterpart, to the plaintiff who instituted the present suit to recover the land on paying off to the 1st defendant the amount due to him. *Held,* that the sale-deed to, and the counterpart by, the 1st defendant could not be construed as constituting a mortgage so as to entitle the plaintiff to redeem the property and further that the above counterpart created a contract, personally with the second defendant alone, which was not assignable and that its assignment, therefore, could confer no rights on the plaintiff as against the defendant. UTHANDI MUDALI v. RAGHAVACHARI, **16 M.L.J. 106=29 M. 307.**

(24)—*Broker—Position and rights of—Commission—Subsequent Modification of contract-or between buyer and seller does not affect—Commission of broker.*—In the case of a sale, the broker is entitled to his commission, if the relation of buyer and seller is really brought about by his act, although the actual sale has not been effected by him. Where the plaintiff sued the Municipality of Bombay for brokerage in respect of land purchased by them, *held* that, if during the time the broker was negotiating with the vendor, the latter was induced to consent to the sale, the broker was entitled to his brokerage. It was not material to inquire what operated upon the mind of the vendor to bring about this condition of mind, whether it was the advice of her friends or the knowledge that her land could be acquired compulsorily, or the persuasions of the broker. It was sufficient to support the broker's claim if the vendor's acceptance of the terms was brought about during his intervention; and the fact that the Municipal Commissioner stepped in at the last moment and himself actually struck the bargain, did not deprive the broker of his claim to brokerage. [*R.*, 9 Bom. L. R. 1232; *D.*, 22 B. 540] A broker is entitled to his commission where he has induced in the vendor the contracting mind, *i.e.*, the willingness to open negotiations upon a reasonable basis; and his commission cannot be affected by the fact that a change or modification of the terms of the contract is made between the buyer and seller without the broker's intervention. THE MUNICIPAL CORPORATION OF BOMBAY v. CUVERJI HIRJI, **20 B. 124.**

(25)—*Sale of land — Mutual covenants — Whether purchaser bound to pay purchase-money before vendor performs his agreement—Earnest-money, forfeiture of.*—A purchaser is not bound to pay the balance of the purchase-money till the vendor had put the property in the condition in which it was to be conveyed to him. Therefore, where the vendor of certain property undertook to shift a door and to put up a fence, and the purchaser undertook to pay the balance of the consideration within three months: *Held*, that the purchaser was justified in not paying the balance of the purchase money until the vendor had carried out his part of the contract, and that the purchaser was entitled to get back his earnest-money as the vendor failed to perform what he had undertaken to do. RASIK LAL v. CHANDRA BHUSHAN, **10 Ind. Cas. 525.**

(26)—*Principal and his constituent — Sale and purchase in accordance with the constituent's instructions — First contract— Cancelling the contract—Balancing and adjustment of the first contract.*—Where the plaintiff on a constituent's instructions buys a particular number of bales of cotton at a given price, and the latter on his instructions sells a similar number of bales at the same price, then as between the constituent and the plaintiff the former's liability on the first contract is treated as balanced and adjusted. To speak of these contracts of sale and purchase as being "cancelled" is perhaps not accurate; but what is meant is that a contract of the one class is followed by a contract of the other, having the effect of cancelling and reducing liability on the first. CHANDU LAL v. SIDHRUTHRAI, **7 Bom. L.R. 165=29 B. 291.**

(27)—*Immoveable property*—Bona fide *purchaser — Seller without title — Right of real owner not affected.* — The fine imposed on a person convicted under the I.P.C., not having been realised, the Deputy Commissioner, instead of seizing his moveable property as he could have done under s. 61 of the Civ. Pro. Code, took possession of his house and sold it in auction to the defendant. In a suit by the owner of the house, the convicted person, for recovery of possession, *held* that the Deputy Commissioner had no right to or title in the house, and could not confer even on a *bona fide* purchaser any better right than he had, and that therefore the plaintiff was entitled to recover possession. SALIG RAM v. SALIG RAM, **14 P.R. 1871.**

(28)—*Sale of land—Vendor not in possession—Defect of title—Caveat emptor.*—When a man knowingly buys a doubtful title, without any covenant on the part of the vendor express or implied for title, he gets in the execution of the conveyance all that he bargained for; and if the title turns out to be bad, the purchaser gets no doubt less than he hoped, but not less than, so far as the vendor is concerned, he had the right to demand. As between him and the vendor, there is no equitable ground for relief, as the doctrine of *caveat emptor* applied in such a case. HIRA NAND v. MAHIA, **90 P.R. 1876.** [*D.*, 36 P.R. 1884.]

(29)—*Purchaser for value from benami holder—Deed of sale from a Mahomedan woman—Presumption.*—It is a principle of natural equity, which must be universally applicable

***Vendor and Purchaser*—continued.**

——1.—General—*continued.*

that, where one man allows another to hold himself out as the owner of an estate, and a third person purchases it for value from the apparent owner in the belief that he is the real owner, the man who so allows the other to hold himself out shall not be permitted to recover upon his secret title, unless he can overthrow that of the purchaser by showing either that he had direct notice, or something which amounts to constructive notice, of the real title; or that there existed circumstances which ought to have put him upon an enquiry that, if prosecuted, would have led to a discovery of it. [*F.*, 26 A. 490=A.W.N. 1904, 99; *R.*, 9 Bom. L.R. 388, 35 C. 877, 5 L.B.R. 125, 10 C. L.J. 150=1 Ind. Cas. 264, 4 Ind. Cas. 488.] There is nothing in the position of a vendor being a Mahomadan woman living with her children upon the estate, and somtimes letting it, which should put any one upon enquiry whether she was the real owner or not. The mere fact of a man building upon or spending money to improve property belonging to the woman with whom he was living, cannot lead to the inference that, contrary to the apparent title, he had purchased the land himself; and neither this fact nor the circumstance of the deed of sale from a Muhammadan woman containing the apparently usual clause that she had made the sale with the consent of the family, was sufficient to put the purchaser on enquiry. RAM COOMAR KOONDOO v. JOHN AND MARIA MCQUEEN, **11 B.L.R. 46, P.C.=18 W.R. 166=I.A. Sup. Vol. 40=3 Sar. 160.**

(30)—*Goods fraudulently taken possession of—Possessor, liability of—Lien.*—When goods have been sold on credit and possession has been delivered to the purchaser, the title vests completely in him, and the vendor has no lien in the goods sold. Where the goods were sold on credit, no time was fixed for the payment of the price, and the purchaser obtained possession of the goods, if thereafter the goods were unlawfully taken away from the custody of the purchaser by other persons, the vendor was not entitled to hold the latter directly responsible for his claim in a suit for the price of things sold. ERA APENA v. ERA SWAMI, **16 C.L.J. 575=17 Ind. Cas. 963.**

(31)—*Specific covenant to pay damages—Costs of defending vendor's title—Right of vendee to recover.*—In the absence of a specific covenant to the contrary, a vendee of certain immoveable property cannot recover from his vendor the costs incurred by him in defending a suit wherein the vendor's title was disputed. BADLU v. ULFAT HUSAIN, **A.W.N. 1883, 35.**

(32)—*Default by vendee to pay purchase money to vendor's creditor as agreed—Cause of action for vendor to sue vendee—Right of vendor to the purchase money—Limitation.*—On a sale of lands by plaintiff to defendant, the latter undertook to pay the purchase-money to a creditor of the plaintiff. Defendant having failed to pay, accordingly, the said plaintiff's creditor sued the plaintiff and certain purchasers of his hypotheca from plaintiff and realised from such purchaser the amount due by plaintiff. Plaintiff, thereon, alleged an undertaking by her to repay the purchasers the amount they had to pay to her creditor and instituted the present suit to recover that amount as damages from the defendant. *Held*, plaintiff's suit, as for damages, was not maintainable and her cause of action would arise only on payment of any money by her, but the defendant, having failed to comply with the terms of sale, was bound to pay up the purchase-money directly to plaintiff, her vendee, and limitation for a suit by the latter begins to run only from when the performance by the defendant of his agreement to pay the plaintiff, vendor's creditors, becomes no longer possible. TANGAMMAI NACHIAR v. SUBBAMMAL, **16 M.L.J. 20.**

(33)—*Personal covenant to pay—Covenant to pay before Sub-Registrar—Tender and refusal—Breach of contract in writing registered—Transfer of Property Act* (IV *of* 1882), *s.* 55 (5) (*d*)—*Action for money—Limitation Act* (XV *of* 1877), *sch.* II, *art.* 116.—Where, in a sale deed, the vendee covenanted to pay the purchase money before the Registrar, and the same on being tendered was refused by the vendor, ***held*** that an action for recovery of money was not governed by art. 116 of sch. II of the Limitation Act, 1877, in so far as the personal remedy is concerned, and that the action cannot be sustained as on a breach of contract in writing registered. VYTHINATHA AIYAR v. BEEMACHARIAR, **8 Ind. Cas. 804=9 M.L.T. 136.**

See APPEAL—ORDERS, 66 P. R. 1883.

See APPEAL—MISCELLANEOUS, 2 B. 248.

See APPELLATE COURT — OBJECTION FIRST TAKEN IN APPEAL, 15 M. 50.

See BENAMI TRANSACTION—GENERAL, 19 M. 60=5 M.L.J. 222.

Of a portion of an occupancy holding, right of, to make a deposit, under s. 310-A, Civ. Pro. Code, 1882—*See* CIV. PRO. CODE, 1908, O. XXI, r. 89, s. 47, 7 C.L.J. 282.

See CONTRACT ACT, 1872, ss. 69, 70, 6 A. 67.

Stoppage in transitu—Duration of right—Unpaid vendors—Marshalling of assets by creditor—*See* CONTRACT ACT, 1872, s. 99, 11 Bom. L.R. 1250=4 Ind. Cas. 561.

Possession of vendor after sale with consent of purchaser—Notice to public—Re-sale by the vendor to third party—Title of vendee—*See* CONTRACT ACT, 1872, s. 108, 27 P.R. 1902.

Defence of vendor's title by purchaser—Costs of suit when recoverable from vendor—*See* COSTS—SPECIAL CASES, A.W.N. 1881, 160.

Sale of portion of house by agricultural tenant—Suit for ejectment of vendor from whole house—*See* CUSTOM, 6 A.L.J. 719=6 M.L.T. 178=2 Ind. Cas. 490.

Vendor and Purchaser—continued.

——**1.—General**—*continued.*

Vendee not to see to application of money by vendor—*See* CUSTOMS, PUNJAB—ALIENATION, 67 P.W.R. 1910=6 Ind. Cas. 986.

Right of purchaser of property at execution-sale—Property subject to a mortgage, but not mortgage executed by the judgment-debtor—*See* DECREE—MISCELLANEOUS, 35 C. 877.

See EASEMENT, 18 B. 382.

See ESTOPPEL—ESTOPPEL BY CONDUCT, 5C. 669=5 C.L R. 533.

Decree obtained against person other than real representative of deceased debtor—Real representative not bound to oppose at sale in execution of decree—Mere quiescence of real owner, effect of—*See* ESTOPPEL—ESTOPPEL BY CONDUCT, 9 B. 86.

Vendor's lien for unpaid purchase-money—*See* EVIDENCE—MISCELLANEOUS, 21 M.L. J. 462.

Contract—Fraud between vendor and purchaser, effect of—*See* FRAUD—GENERAL, 49 P.R. 1904.

Unregistered sale of land—Charge for purchase-money—*See* HUSBAND AND WIFE, 10 Ind. Cas. 919.

Delay in payment of purchase-money—Liability to pay interest to the vendor—*See* INSOLVENCY—MISCELLANEOUS, 148 P. R. 1907.

See LIMITATION ACT, 1908, s. 10 and art. 154, 1 B. 269.

Vendor selling a field not in his possession—Purchaser claiming back the purchase-money—Claim on money had and received—*See* LIMITATION ACT, 1908, arts. 62, 97 3 Bom. L.R. 190=25 B. 593.

Vendor's charge upon immoveable property for unpaid balance of price, suit to enforce—Charge for unpaid purchase money—*See* LIMITATION ACT, 1908, arts. 111, 132, 9 O. C. 284.

See LIMITATION ACT, 1908, arts. 113, 144, 6 A. 231=A.W N. 1884, 42.

Vendor and purchaser—Agreement by vendor to refund purchase-money in case of land or rent proving deficient—Suit for refund—Suit for compensation for breach of contract—Limitation Act, 1877, sch. II, No. 116—*See* LIMITATION ACT, 1908, art. 116, 3 A. 712=A.W.N. 1881, 67.

Unregistered sale-deed—Use of the deed for collateral purposes—*See* LIMITATION ACT, 1908, arts. 132, 144, 13 Bom. L.R. 867.

See LIMITATION ACT, 1908, art. 134, 19 B. 140.

Suit by vendee for possession—Burden of proof—*See* LIMITATION ACT, 1908, art. 142, A.W.N. 1906, 95=3 A.L.J. 334=28 A. 479.

Vendor and Purchaser—continued.

——**1.—General**—*concluded.*

See LIMITATION ACT, 1908, art. 144, 19 B. 43.

Vendor leaving consideration for sale with vendee for payment to former's mortgagee—Position of purchaser — *See* MORTGAGE — GENERAL, 7 A.L.J. 914, F.B.=7 Ind. Cas. 200.

Purchaser in execution of mortgage decree—Previous purchaser of mortgagor's right not made a party to the mortgage suit—Right to possession—*See* MORTGAGE—GENERAL, 6 C.L.J. 609.

Mortgagee purchaser, remedy of, in suit against person excluded in mortgage suit—*See* MORTGAGE—REDEMPTION, 6 C.L.J. 612=12 C.W.N. 107.

Setting aside of sale—Possession with vendee—Accident to property before delivery by vendee—Liability for damages—*See* NEGLIGENCE, 13 B. 183.

See PARTIES TO SUIT—SUITS BY REPRESENTATIVES OF A CLASS, 19 B. 391.

Admission of receipt of price by, effect of, on amount due to vendee by pre-emptor — *See* PRE-EMPTION — PURCHASE-MONEY, 9 O.C. 308.

Pre-emption—Plaintiff's title at the time of institution of the suit—Title acquired by purchaser subsequent to the cause of action—*See* PRE-EMPTION — MISCELLANEOUS, 11 O.C. 290.

Personal covenant for title by vendor in favour of vendee—Right of pre emptor to enforce the covenant—*See* PRE EMPTION—MISCELLANEOUS, 141 P.R. 1907=93 P.W.R. 1907=57 P.L.R. 1908.

Vendee not taking possession from vendor—Effect—Fraud—*See* REGISTRATION ACT, 1908, s. 50, 13 B. 229.

See SPECIFIC PERFORMANCE, 12 B. 658, 15 B. 657.

Contract for sale—Building upon it before completion of sale—Rights of vendee — *See* SPECIFIC PERFORMANCE, 1 A.L.J. 688.

Lien for unpaid purchase-money — *See* TRANSFER OF PROPERTY ACT, 1882, s. 55, 6 C.W.N. 150.

Vendor's lien for unpaid purchase-money—Agreement that purchase-money should be paid by vendee to third parties—Whether vendor can enforce the statutory charge—*See* TRANSFER OF PROPERTY ACT, 1882, s. 55, cl. 4 (*b*), 5 Ind. Cas. 87=7 M.L.J. 376=33 M. 446.

Unpaid vendor—Charge—Personal remedy—*See* TRANSFER OF PROPERTY Act, 1882, s. 90, 2 A.L.J. 379=A.W.N. 1905, 144.

***Vendor and Purchaser*—continued.**

——2.—Bills of Sale.

(1)—*Contract of sale—Specific performance.*—Suit for possession of a four-anna share of a Raj and Zemindary under a *kobala* or bill of sale, purporting to be an absolute sale for the sum of Rs. 75,000 executed at a time when the alleged vendor was neither in possession nor had established his title to the Raj and Zamindary. The vendor, who had established his title to the Raj, and was in possession, by his answer set up this case—that, being in want of money to carry on suits to recover the Raj and Zamindary he applied to one K (whose rights had become vested by purchase in the plaintiff) who agreed to make advances to him on condition of his executing the bill of sale, and that no part of the consideration money there expressed was paid on execution of the bill of sale, though some inconsiderable advances were made to him ; that he was afterwards pressed to execute a bond to secure the sum of Rs. 75,000 hypothecating the whole Raj and Zamindary in substitution of the bill of sale, but that no consideration was paid on that occasion, the real contract being one to secure moneys already advanced and future advances, which contract had not been complied with by K's assignee. *Held* by the Judicial Committee, on the evidence, that the real arrangement between the parties was for K to make advances, from time to time, and that the form of the contract was a device adopted to evade the effect of the transaction being stamped with the character of champerty and that the bill of sale must therefore be set aside. In a suit so framed to obtain possession, the appellate Court will not impose terms upon the defendant to repay the advances made by K, as the plaintiff, his assignee, had his remedy and could sue on the bond. It is very questionable in any case whether the effect of the execution of a bill of sale by a Hindu vendor is to pass an estate irrespectively of the actual delivery of possession. RAJA SAHIB PRAHLAD SEN v. BABOO BUDHU SINGH, **2 B.L.R. P.C. 111 = 12 M. I.A. 275 = 12 W.R. P.C. 6.** [*F.*, 21 W. R. 101, 6 B. 380, F.B., 9 C. 744, F.B., 15 C. 89 ; *Appl.*, 9 C. 125; *Rel. on.*, 30 C. 265 ; *Commented on*, 23 W.R. 134 ; *Expl.*, 3 C.W.N. 763, 2 B. 299 ; *R.*, 12 W.R. 217, 7 B.H.C.A.C. 4, 18 W.R. 140, P. C., 20 W.R 446, 1 C. 297, 10 A. 133 = 8 A.W.N. 35, 7 C. 753, 8 C. 597, F.B. = 10 C.L.R. 241, 8 C 923, 6 B. 645, 6 M. 404, 10 C. 1087, 11 C. 121, P.C.; 9 B. 324, 11 A. 57 = 8 A.W.N. 296, 13 M. 60, 2 O C. 149, 12 A. 234, 5 C.L.J. 413 ; *D.*, 17 W.R. 238, 11 A. 118.]

(2)—*Vendor under bill of sale remaining in possession — Allegation of fraud — Suit to set aside bill of sale.*—When a person grants a bill of sale to another person absolute in its terms, he cannot sue to have it set aside on the ground that he has all along remained in possession and if he alleges fraud in the contract, and adduces the fact of non-payment of the consideration-money as evidence of fraud, he will be

***Vendor and Purchaser*—continued.**

——2.—Bills of Sale—*concluded.*

bound to show proof of non-payment. TEKAIT MEGRAJ SINGH v. JOYMUNGUL SINGH, **1 Ind. Jur. N.S. 78.**

(3)—*Deed of sale—Non-delivery by vendor—Purchase-money not paid—Effect*—Onus *of proof.*—Where a bill of sale, though signed and registered, was never delivered by the vendor, and the plaintiff-vendee stated that he paid only part of the consideration-money, the question of who is to prove the non-receipt of the consideration-money does not arise in the case. The lower Court having found as a fact that the vendee did not pay any part of the purchase-money, he cannot force the vendor to complete the transfer on being paid the purchase money. LALLA JUDURJEET LAL GUJADHUR v. MUSST. JUMOONA, **5 W.R. 248.**

(4)—*Sale—Deed of sale deposited with third party for performance of certain acts by vendee—Suit for possession.*—Where a bill of sale after execution is deposited with a third party until the purchaser performs certain acts as the consideration for the sale ; and the purchaser gets possession of the bill before such performance, no effect can be given to it as against the vendor, and a suit by the vendee for possession of the lands covered by it does not lie. RAJ CHUNDER CHOWDHRY v. RAJNATH CHOWDHRY, **W.R. 1864, 222.**

——3.—Breach of Covenant.

(1)—*Contract for sale of land—Deposit by vendee—Stipulation for forfeiture of deposit, on failure to pay balance of purchase-money and to complete sale by certain date—Time, essence of contract—Failure to complete sale—Rescission of contract by vendor—Right of vendee to return of deposit—"Penalty," meaning of the word—Distinction between "penalty" and "damages"—Indian Contract Act, ss.* 55, 64, 73 *and* 74.—A agreed to purchase certain lands from B for Rs. 41,000, and a sum of Rs. 4,000 was paid 'as advanced' to B on the date of the contract. It was also agreed that A should pay the balance of the purchase-money, and complete the sale by a certain date, and that A should forfeit the above-said amount of advance if he should fail to pay the money and complete the sale by the stipulated time. On A's failure to complete within the stipulated time, B rescinded the contract under s. 55 of the Contract Act, and A brought a suit for specific performance or for the return of the deposit. The lower Court, finding that time was of the essence of the contract, and that B exercised his option of avoiding the contract under s. 55 on A's failure to complete, refused to give A specific performance, but ordered B to return the deposit paid by A at the time of executing the contract of sale. It was contended that, since it was expressly stipulated that the amount was to be forfeited by A in the event of his delaying to complete the contract by a certain date, A was not on his failure to

Vendor and Purchaser—continued.

—3.—Breach of Covenant—*continued.*

complete, entitled to the return of deposit. *Held, per Sankaran Nair, J. (Wallis, J., dissenting and Sankaran Nair, J.'s opinion prevailing)* :—Under the Indian Contract Act, the vendor can recover only the damages sustained by breach of contract, and if he rescinds the contract, he must restore the deposit, and that, as in this case, no damage has been sustained, A is entitled to the return of the deposit (10 A. 27, 16 M. 474, 29 M. 118, *R.*; 19 A. 849, 23 B. 56, *D.*) Where a person, at whose option, under s. 55, a contract is voidable, rescinds it, while he gets compensation under ss. 73 and 74 for the breach, he has to restore any benefit, so far as may be, to the other party (s. 64), the object being to replace the parties in the position which they occupied before the contract was made. The deposit was *prima facie*, therefore, to be restored under s. 64. This is consistent with the rule of English law that, where there is no abandonment or repudiation of the contract by the purchaser, and the vendor puts an end to the contract, he cannot claim to retain the deposit. S. 64 applies to all contracts that are voidable and not merely to those voidable under ss. 19 and 19-A. Where it is clear from the language of the stipulation and the intention of the parties that the amount of deposit was the agreed amount of damage, then the party committing the breach of the agreement is not entitled to recover his deposit. But when it is clear that the stipulation is only a penalty, the stipulation cannot be enforced. Ss. 73 and 74 are intended to get rid of the distinctions between penalties and liquidated damages, and s. 74, as amended by Act VI of 1899, shows with sufficient clearness that a deposit, as such only, is not forfeited by any breach of contract. The "penalty" in this section means any provision intended to compel the performance of a contract, and hence includes a deposit. *Per Wallis, J.*—Ss. 73 and 74 deal with the right to recover compensation for breach of contract, and do not deal with the right of the defaulting party to recover back a deposit he has paid, or with the right of the other party to retain it. The distinctions drawn by Courts of Equity between stipulations for liquidated damages, and stipulations for penalties, having no bearing in this case. Courts of Equity do not regard a stipulation for the forfeiture of a deposit as a stipulation for a penalty from which equity will relieve. A deposit regarded as security or guarantee for the performance of a contract must be regarded as outside of and collateral to the main contract, although consisting of money. But the provisions of s. 64, requiring the party avoiding the contract to restore any benefit he has received thereunder, as far as may be, do not extend to a deposit regarded as a guarantee. So there is no authority for the proposition that, where time is of the essence of the contract and the vendor owing to non-payment is entitled to treat the contract as rescinded, and does so, he

Vendor and Purchaser—continued.

—3.—Breach of Covenant—*continued.*

is bound to return the deposit. NATESA IYER v. APPAVU PADAYACHI, **6 M.L.T. 334=20 M. L.J. 230=3 Ind. Cas. 941=33 M. 375.** (19 A. 849, 23 B. 56, *R.*)

(2)—*S.* 55, *sub-s.* 2, *T. P. Act*, 1882—*Implied covenant for title of vendor—English Conveyance Act of* 1881 (44 *and* 45, *Vic., Ch.* 41, *D*).—In all sales of immoveable property, the effect of sub-s. 2, s. 55, T.P. Act, is to imply a covenant for title of the vendor (in the absence of any contract to the contrary), somewhat in the same way as such covenants are implied according to the provisions of s. 7 of the English Conveyance Act of 1881, 44 and 45 Vic., C. 41. When it is found that a vendor had no right to sell a property, he will be liable for damages, even though there has been no fraud on his part. BASARUDDI SHEIKH v. ENAJADDI MALEAH, **25 C. 298=2 C.W.N. 222.** [*F.*, 13 C.P.L.R. 97; *R.*, 4 C.W.N. 63, 8 O.C. 345.]

(3)—*Covenant for quiet enjoyment—Breach—Measure of damages.*—According to the cases decided under English law, a purchaser or tenant evicted from his holding is entitled to recover the value of the land from which he has been evicted, calculated at the date of eviction, from a vendor or landlord who has guaranteed his title. Where the deed between the vendor and the vendee contains a covenant for quiet enjoyment, there can be no reason why the full value of the property as existing at the time of the breach of the covenant should not be recoverable. As to mortgaged land, it is difficult to arrive at the true damages. In ordinary cases, a mortgagee, when deprived of his security, can only recover his mortgage money as damages for breach of the covenant for quiet ejectment. But, where, as in the present case, the mortgage-deed contains a covenant on the part of the mortgagor not to pay off the mortgage for a long term of years, the plaintiff may, in addition, be awarded damages for having been deprived of a favourable and, for many years, permanent investment. In estimating, however, the value of the prospective profits of such a mortgage to the mortgagee, for the purpose of ascertaining the loss of future profits incurred by him on account of the breach, all circumstances must be taken into account and it is the duty of the Court to value such profits as a jury would. NAGARDAS SAUBHAGYADAS v. AHMEDKHAN, **21 B. 175.** [*Rel. on*, 3 N. L. R. 80; *R.*, 25 B. 593, 32 B. 165=9 Bom. L. R. 1087.]

(4)—*Covenant for quiet enjoyment—Suit for damages for breach—Liability of vendor's representatives.*—Where a person purchases property, in the belief, that it is free from encumbrances, with a covenant by the vendor for quiet enjoyment, the measure of damages, in case of the disturbance of the quiet enjoyment, would be the amount which the vendee has been obliged to pay, to secure that quiet enjoyment which

***Vendor and Purchaser*—continued.**

——3.—Breach of Covenant—*concluded.*

the vendor has contracted to give him. The legal representatives of the vendor, in possession of the vendor's assets, will also be liable for the breach of the covenant and contract made by him. CHATTURI v. SURAJ NARAIN, **A.W. N. 1881, 50.**

(5) —*Sale—Mortgage—Implied covenant for title—Title found defective—Right of suit—Covenant for title—Breach—Suit for damages—Limitation.*—Although there may be no express covenant for title, a vendor or mortgagor must always be held impliedly to warrant the title of the property sold or mortgaged, and if it be found that the title is defective the vendee or mortgagee must sue on the breach of the implied contract. A suit to recover damages or loss sustained on breach of an implied covenant for title should be brought within three years from the date of the breach. DWARKA DASS v. RUTUN SINGH, **2 Agra 199.**

(6) —*Sale—Contract to reconvey—Breach of contract.*—The defendant purchased a share in certain lands on condition that he must retain possession of the property, and should not in any way alienate it or let it go into the hands of others without giving the vendor the option of taking it at the price paid for its purchase. The defendant then leased it for 15 years and left the country. *Held* that the lease was a substantial violation of the contract entered into between the parties, and that the vendor's representatives were entitled to a reconveyance of the property on payment of the sale price. RAMNATH LUSHKUR v. MR. J.P. WISE, **25 W.R. 378.**

(7) —*Agreement to sell—Subsequent sale with notice of the agreement—Rights of the first purchaser—Liabilities of the second purchaser.*—Defendant 1 agreed to sell a *thikan* to plaintiff on the 25th June, 1895: but on the 19th December 1895 conveyed tha same to defendant 2 who brought it with notice of the contract the 25th June 1895. Plaintiff brought a suit in 1896 against defendant 1 for specific performance of his contract; and a decree was passed in his favour on the 8th March 1897, in virtue of which a conveyance of the *thikan* was executed to the plaintiff by the Court. In taking its possession, however, plaintiff was resisted by defendant 2. Plaintiff, then, instituted this suit against defendant 2 for possession: *Held* (1) that plaintiff had a right to the *thikan* which must prevail against any title acquired by defendant 2 by virtue of the conveyance to him; (2) that as an actual conveyance was executed in favour of defendant 2, plaintiff was entitled to a declaration that defendant 2 held the property for the benefit of the plaintiff to the extent necessary to give effect to the contract of the 25th June 1895; (3) that defendant 2 should be ordered to execute to the plaintiff a proper conveyance of the *thikan*; and (4) that the plaintiff was entitled to a decree for possession. GAFUR v. BHIKAJI, **3 Bom. L.R. 596=26 B. 159.**

***Vendor and Purchaser*—continued.**

——4.—Breach of Warranty.

(1)—*Warranty of title by seller, when buyer may sue for breach of—Allegation and proof of loss sustained by buyer.*—A warranty of title amounts to a contract by the seller that, in consideration of the buyer purchasing the property and paying the consideration-money, he, the seller, will make good to the buyer any loss which the buyer may incur by reason of the buyer not having a good title to the property. This is an absolute contract from the moment it has been entered into, and the buyer can sue upon it at once if he can show that the seller has not a good title in accordance with his undertaking, and that he has sustained loss in consequence. Although the buyer may thus bring an action on a warranty of title, if he can show a breach of that warranty, it does not follow, as a matter of course, that he is entitled to recover back, as damages, the whole of the consideration-money, or that, on its being ascertained that the seller had no title, the conditional sale would on that account become nullified. SYUD SAYEF ALI v. SYUD MAHOMED JOWAD ALI, **7 W.R. 196.**

(2)—*Warranty of title—Misrepresentation—Sale—Fraud—Allegation of fraud—Refund—Caveat emptor.*—An advertisement setting forth a description of villages and calling upon intending purchasers to come forward, is substantially an implied warranty of title and makes the advertiser responsible to the purchaser deceived by such misrepresentation. In cases like this, it is a sufficient proof of fraud to show that the fact of ownership, as represented, was false, and that the person making the representation had a knowledge of a fact contrary to it. [*F.*, 18 W. R. 276.] Where fraud has been substantially alleged, the absence of a stipulation to refund the consideration money for a putnee lease does not protect the grantor of the lease from refunding; but where there is no allegation of fraud, the maxim *caveat emptor* may apply. RAJAH NIL MONEE SINGH v. GORDON STUART & CO., **9 W.R. 371.**

(3)—*Reg.* VII *of* 1825—*Putnee Reg.* VIII *of* 1819—*Sale—Implied warranty.*—No analogy exists between a sale under Reg. VII of 1825, and a sale under the Putnee Reg. VIII of 1819. In a suit under Reg. VII of 1825, the rights and interests of the judgment-debtor, *whatever they might be*, are put up for sale; but in a sale under Putnee Reg. VIII of 1819, there is an implied warranty on the part of the Zemindar to give possession to the purchaser. KHELUT CHUNDER GHOSE v. KRISTO GOBIND DEB, **18 W.R. 276.**

(4)—*Sale—Doubtful title—Guarantee—Suit on guarantee—Right of vendor to defeat purchaser.*—A prudent purchaser who is aware of the doubtful character of the title to an estate which he is purchasing, is fully justified in protecting himself by taking a guarantee from the seller; and the seller who has given the guarantee with the like knowledge of the character of the title, cannot plead afterwards that the purchaser

***Vendor and Purchaser*—continued.**

——4.—Breach of Warranty—*continued.*

is not entitled to insist on his guarantee because he was aware of the very fact which induced him to stipulate for it. PATHOO LALL v. RADHIKA DOSS, **3 N.W.P. 106.**

(5)—*Civ. Pro. Code (Act XIV of 1882), ss 28, 31—Misjoinder of causes of action—Suit for possession and for damages—Vendor and purchaser—Indemnity clause, construction of—"Dispossession by us," etc.*—Where the vendor agreed in a sale deed that, if the vendee be dispossessed from the land by the vendor, his heirs or representatives, he should be bound to refund the purchase-money with interest: *Held*, that those terms only impose on the vendor a responsibility for those claiming under him, and did not render him liable to guarantee the purchaser against dispossession by some one claiming under a title paramount. Where the plaintiff joins a claim for possession of land against defendant No. 1, with a claim for damages against defendants 2 and 3, the vendors of the plaintiff. *Held*, that the causes of action, on which the two claims are based, are conflicting and hostile and cannot be conveniently tried together in one suit, which is, therefore, bad for misjoinder of causes of action and must fail against defendants 2 and 3. GURU PRASAD DAS v. NARENDRA NARAIN MAITY, **1 Ind. Cas. 361.**

(6)—*Sale of property by mortgagee under power of sale - Sale on condition of purchaser taking such title as vendor can give—Absence of any title whatever in vendor — Purchaser whether could be compelled to complete purchase.*—This was a suit brought to recover from the defendant the balance of the purchase money of a house put up for auction-sale by the plaintiff, a mortgagee of the house, and purchased by the defendant. Plaintiff, the vendor was found to have never had any title to the house, having taken it up on mortgage from one R.D. who had stolen the title-deeds from the real owner in possession. As such mortgagee, therefore, plaintiff never acquired any title whatever to the property and, consequently, he had none to give to the defendant. The present action, though brought in form as a suit to recover the residue of purchase-money, was virtually one to compel specific performance of the contract to purchase. The question therefore had to be decided whether, having regard to one of the conditions of the sale in the following terms, "The vendor shall not be bound to give any better title to the purchaser than he himself possesses, and the purchaser shall take the premises sold with such title only as the vendor can give him," the Court could compel the defendant (the purchaser) to complete the purchase, notwithstanding that the plaintiff vendor was found never to have had title of any sort, nor even the possession to offer to the purchaser. *Held* that the defendant could not, under the circumstances, be compelled to complete the purchase, and plaintiff was not entitled to recover the balance of the

***Vendor and Purchaser*—continued.**

——4.—Breach of Warranty—*concluded.*

purchase-money. The defendant was entitled to say that the stipulation contained in the above-mentioned condition necessarily implied that his vendor had some title, however defective it might be, and no information received by him at the auction had the effect of giving him any notice to the contrary. MOTIVAHOO v. VINAYAK VEERCHAND, **12 B. 1.** [*D.*, 13 M. 158, 30 M. 284=17 M.L.J. 167=1 M.L.T. 416.]

(7)—*Covenant for title—Pre-emption—Construction of covenant.*—Where the vendor, by a clause in the sale-deed, undertakes to convey a good title to the property sold and to indemnify the vendee for any loss and cost of litigation resulting from flaws or defects in his title, the vendee, who is deprived of the property by a successful pre-emptor, cannot sue the vendor for the costs of defending the pre-emption suit; for, the clause for indemnity is not applicable to a loss accruing to the purchaser from his disqualification to buy the property. GHULAM JILANI v. IMDAD HUSAIN, **4 A. 357 =A.W.N. 1882, 67.** [*D.*, 111 P.R. 1908.]

——5.—Completion of Transfer.

(1)—*Vendor and purchaser—Oral transfer—Hindu vendor and purchaser.*—Land may pass by mere parol between Hindu vendor and purchaser. MOHESH CHUNDER CHATTERJEE v. ISSUR CHUNDER CHATTERJEE, **1 Ind. Jur. N.S. 265.**

(2)—*Contract Act (IX of 1872), s. 85—Contract for sale of moveable and immoveable property—Decree for specific performance—Passing of ownership—Contract to sell immoveable property—Decree for specific performance and payment of purchase money—Passing of ownership.*—Were an agreement is made for the sale of the immoveable and moveable property combined, the ownership of the moveable property does not, under s. 85 of the Contract Act, pass before the transfer of the immoveable property. [*R.*, 12 A. 234.] In the mofussil of the Bombay Presidency, where there has been a contract for sale of immoveable property and a suit by the vendee for specific performance of it, the decree for the specific performance of it (coupled with the payment of the purchase money), pass the ownership to the vendee, and entitled him to the possession of the property. It is not necessary that any conveyance should be executed to the decree-holder in order to pass the ownership. DHONDIBA KRISHNAJI PATEL v. RAMACHANDRA BHAGAT, **5 B. 554.**

(3)—*Vendor and purchaser—Sale—Consideration—Sale complete without payment of full consideration—Arrangement that vendee should pay part consideration to a third person—Third person surety for payment of vendor's debt to their creditor—Vendee's suit for possession Lien Lien of surety not in possession—Agent, surety is not.*—The vendors of certain

***Vendor and Purchaser*—continued.**

——5.—Completion of Transfer—*continued.*

property received a part of consideration themselves and agreed that the vendee should pay the balance to a third person who was a surety for the vendors for the payment of a debt to their creditor. This arrangement was recited in the sale-deed with the consent of the vendors, the vendee and the surety. The vendee not being given possession of the property, sued the vendors for possession. The defence was non-receipt of full consideration and a lien to the extent of consideration not received. *Held*, (1) that the sale was complete and binding, and that the vendors could not resist the claim; (2) that the surety, and not the vendors, were entitled to claim the unpaid balance; (3) that the surety was not an agent of the vendors but was more than an agent; (4) that the vendors had no lien; (5) that the surety also had no lien as he was not in possession of the property; (6) that, even if the surety had a lien, he should have asserted it himself, and that the vendors could not assert it on his behalf or take over his lien and act as if it were their own lien. MAULA DAD v. GHULAM, **8 Ind. Cas. 674.**

(4)—*Sale of immoveable property—Proof of payment of consideration not necessary for completion of sale—Transfer of ownership—Intention to postpone passing of ownership until after payment of consideration.*—The deed of sale under which the present suit for possession was instituted purported to transfer the property for a consideration acknowledged to have been received. The deed was duly registered and the vendor applied to the Revenue authorities to effect mutation of names in favour of the purchaser. There was nothing to show that it was the intention of the vendor and vendee that the ownership in the land was not to pass until after the payment of the consideration. *Held* that the transaction had passed beyond the stage of a mere contract of sale, and that the purchaser was entitled to a decree declaring that, on condition of payment of the price to the vendor, the plaintiff, would be the owner of the right, title and interest of the vendor in the property covered by the deed of sale. Plaintiff could not be given a decree for immediate possession because the property sold was a share of a joint undivided estate. SHER SHAH v. NATHU, **192 P.R. 1882.** (132 P. R. 1879, *F*)

(5)—*Vendor having lien on property sold and possession of it—Right of purchaser at Court-sale in execution of decree against vendee.*—Where a house was sold by a registered conveyance, but the possession of the house was with the vendor, who had also a lien upon it for the unpaid purchase money, a purchaser at a Court sale of the vendee's right, title and interest, in execution of a decree against him, although he became the legal owner of the house, acquired the vendee's title, only subject to all his liabilities. UMEDMAL MOTIRAM v. DAVU *bin* DHONDIBA, **2 B. 547.** [*F.*, 11 Bom. L.R. 383, 30 A. 125=5 A.L.J. 96=A. W.N. 1908, 38; *Appl.*, 11 A. 244, 5 Bom. L.R. 177; *R.*, 4 C L.J. 334, 4 C L.J. 338, 27 M. 28, 11 Bom. L.R. 313=2 Ind. Cas. 429; *D.*, 18 M. 61.]

(6)—*Contract of sale—Non-payment of purchase money.*—Where a conveyance of immoveable property is executed on the understanding that the purchaser should apply the portion of the purchase-money retained by him for the discharge of certain debts charged upon the property, the failure of the purchaser to discharge such debts or to account otherwise for such money renders the contract of sale incomplete, and he cannot claim possession from the vendor. IKBAL BEGAM v. GOBIND PRASAD, **3 A. 77.** [*Diss.*, 11 A. 244; *R.*, 14 B. 222.]

(7)—*Transfer of Property Act, s. 54—Sale of immoveable property—Registration, effect of.*—The registration of a sale deed effects a transfer of the property to the vendee by virtue of s. 54 of the Transfer of Property Act. PONNAYYA GOUNDAN v. MUTHU GOUNDAN, **17 M. 146.** (8 C. 597, *F*) [*F.*, 1 M. L. T. 432; *R.*, 3 O.C. 215; *D.*, 28 M. 124=14 M.L.J. 493.]

(8)—*Transfer of Property Act* (IV of 1882), s. 54—*Execution, registration and delivery of sale-deed as to immoveable property—Part payment of purchase-money—Suit for possession—"Contract of sale" and "contract to sell," difference between.*—Where a deed of sale of immoveable property was duly executed, registered and delivered to the vendee, who had paid a portion of the purchase-money to the vendor's creditors, *held* that these facts in themselves amounted, under the section, to a full transfer of ownership to the vendee, notwithstanding the circumstances of his having either omitted, refused or been unable to pay the balance of the purchase-money to the vendor or to a mortgagee of the property, as stipulated in the deed, and that he could, consequently, maintain a suit for possession of the property, subject, of course, to such equities, restrictions or conditions as the nature of the case requires. (3 A. 77, *Diss.*; N.W.P. 1886, p. 85, 160 N.W.P. 1868, p. 30, 2 B. 547, *R.*) [*R.*, 18 A. 69, 3 O C. 215, 14 C P.L.R. 57, 4 C.L.J. 334, 1 M.L.T. 432, A. W.N. 1908, 38=5 A.L J. 96=30 A. 125, 5 M. L.T. 203; *D.*, 16 M. 464, 4 C.L J. 338.] A contract of sale is an executed contract and creates a *jus in rem*, as it passes ownership immediately when it has been executed; and a contract to sell belongs to the class of *executory* contracts, and is only a *jus ad rem* for it only creates an obligation attached to the ownership of property and does not amount to an interest therein. SHIB LAL v. BHAGWAN DAS, **11 A. 214=A.W.N. 1889, 96.**

(9)—*Vendor and vendee—Effect of registration unaccompanied by delivery of deed to purchaser—Sale, when becomes completed—Effect to be given to intention of parties.*—

Vendor and Purchaser—continued.

——5.—**Completion of Transfer**—*continued.*

Simple registration of a deed of sale does not necessarily make the transaction complete, unless it is followed by delivery of the sale-deed. Under s. 54, T.P. Act, 1882, the sale of immoveable property of the value of one hundred rupees and upwards can only be made by a registered instrument; but it does not follow from this that the moment the instrument is registered, it should be taken as conclusive that the title has passed. (2 C.W.N. 207, *Appr.*) If the intention of the parties was that the title should pass only on payment of the consideration money, no title can pass until such payment. MANLADAN v. RUGHUNANDAN PERSHAD SINGH, **27 C. 7.** (2 C.W.N. 207, *Appr.*) [*R.*, 28 M. 122=14 M.L.J. 493, 4 C.L.J. 338, 13 C.W N. 44 N., 13 C.W.N. 692.]

(10)—*S.* 54, *Act* IV *of* 1882 (*Transfer of Property*)—*Delivery of possession without writing but for consideration less than Rs.* 100—*Deed of sale unregistered—Registration optional—Question of fact—Second appeal.—Per Trevelyan, J., upholding the decision of Beverley, J. (Hill, J., dissentiente)*—Where there had been delivery of possession without a writing, but for a consideration less than Rs. 100, that would be a good sale, the possession obtained being sufficient "delivery of the property" within the meaning of s. 54, Act IV of 1882. (19 C. 623, *R.*) *Per Trevelyan, J.*—It is not necessary that there should be any formal making over of possession. It can scarcely be supposed that the Legislature while making provision for transactions which would mostly be between poor people, would insist upon very strict formalities. *Per Hill, J.* When the owner of immoveable property of a value less than Rs. 100 has executed to the intending buyer an instrument purporting to transfer the ownership of the property, and the instrument has not been registered, but the intending buyer has been placed in possession, the effect to be attributed to the delivery of possession depends on the intention of the parties, which is a question of fact that cannot be determined on the second appeal. GUNGA NARAIN GOPE v. KALI CHURN GOALA, **22 C. 179.** [*R.*, U.B.R. 1897—1901, Vol. II, 573, 2 O.C. 74, 17 M.L.J. 469; *D.*, 34 C. 207=5 C.L.J. 390.]

(11)—*Completion of sale — Registration.*—A sale might be completed, and it still might be a condition of the contract that purchase money was to be paid afterwards, and the deed in evidence of the contract may not be completed. The bare fact of the deed not being registered would not annul a sale if by mutual agreement, a sale had already been made. KALEE CHURN GIREE GOSSAIN v. LALLA MUDDUN KISHORE, **7 W.R. 317.**

(12)—*Contract for sale of property—Completion conditional — Registration — Rescission of such contract.*—An agreement for the purchase and sale of immoveable property, which made the completion of the contract conditional upon the approval of the purchaser's solicitors, and which provided for the return of the earnest-money and the payment of all costs incurred in the investigation of title on the title being so disapproved, was held not to require registration. [*Cons.*, 7 B. 310; *D.*, 17 C. 919; *R.*, 89 P.R. 1908=145 P.W.R. 1908.] It was also held in the case that, on proof of the reasonableness of the vendee's solicitor's objections regarding the title, the vendee would be entitled to rescind the contract and to the earnest-money and costs. SREEGOPAL MULLICK v. RAM CHURN NUSKUR, **8 C. 856=12 C.L.R. 152.**

(13)—*Suit for specific performance—Approval of title by purchaser's solicitor—Registration* — Where the carrying out of a contract, embodied in certain letters, was in no way conditional upon the approval of solicitors but their approval was a condition precedent to the prompt payment of the purchase money without waiting for a conveyance, the agreement was held to be compulsorily registrable and the title was to be investigated and approved in the ordinary way. COHEN v. SUTHERLAND, **17 C. 919.** (8 C. 856, *D.*)

(14)—*Transfer of Property Act* (IV *of* 1882), *s.* 54—*Sale of land of upwards of Rs.* 100 *in value, necessity of registration in the case of—Possession on oral sale cannot give title.*—The value of the property which was the subject of the sale in this case was upwards of Rs. 2,000. Its transfer, therefore, could, under s. 54 of the Transfer of Property Act, have been effected only by means of registered instrument. Defendant claimed the property under an oral contract for sale, with possession given to him. Possession could not take the place of the registered deed required by s. 54, and defendant, therefore, even assuming that he was entitled to specific performance, cannot resist the present suit of the plaintiff against him, as the property has not passed to him and cannot vest in him unless he is in possession of a registered deed. PAPIREDDI v. NARASAREDDI, **16 M. 464.** [*Doubted*, 16 A. 344; *R.*, 13 C.P.L.R. 164, 29 M. 336=1 M.L.T. 153=16 M.L.J. 395, 7 Bom. L.R. 845; *D.*, 6 M.L.J. 33, 21 M. 291.]

See REGISTRATION ACT, 1908, s. 50, 8 W. R. 300.

——6.—**Consideration.**

(1)—*Sale of property—Effect of non-payment of consideration - Vendor remaining in possession —Suit by vendee.*—Although ordinarily, in a transaction of sale, it may be reasonable to suppose that the seller does not intend to pass the property to the purchaser until he has received his purchase money or until it has been properly secured, it is not an absolute and binding rule of law that the non-receipt of the consideration money in full entitles a vendor to avoid a sale which is otherwise complete.

***Vendor and Purchaser*—continued.**

——6.—Consideration—*continued.*

The probable intention of the parties to be ascertained from their acts should be considered. If the vendor has executed a conveyance of the property and has delivered the deed to the purchaser, and has put him into possession of the land, a subsequent default by the purchaser in the due payment of the purchase money would not, in the absence of fraud, make void the sale or give any other right to the unpaid vendor than a right to sue for the money. Any decree in the vendee's favour might be stayed as to its execution until he had brought into Court or otherwise deposited for the vendor's use the purchase money still remaining due and unpaid. MOHUN SINGH v. MUSST. SHIB KOONWAR, **1 Agra 85.** [*F.*, 11 A. 244=A.W.N. 1889, 96.]

(2)—*Sale-deed executed and registered, non-payment of consideration under, not sufficient to prove that the parties did not intend it to be operative.*—When a conveyance has been duly executed and registered by a competent person, it requires strong and clear evidence to justify a Court in holding that the parties did not intend that any legal effect should be given to it. In order to establish that both parties had intended that the deed should be a mere sham, it needs to be shown for what purpose other than the ostensible one the deed was executed. The mere circumstances that the vendor continued to remain in possession retaining the sale-deed with himself, and that no consideration had passed thereunder, could not afford evidence of such intention on the part of the vendor and vendee. RANGA AYYAR v. SRINIVASA AYYANGAR, **21 M. 56.** [*Appr.*, 1 M.L.T. 452; *L.*, 32 M. 325=17 M.L.J. 350=4 M.L.T. 279.]

(3)—*Registered deed of sale, denial by vendor of receipt of consideration under—Continuous possession with vendor—Onus on vendee to prove passing of consideration.*—The party to a deed duly executed and registered, who alleges non-payment of consideration, is ordinarily bound to prove his allegation. But, where, as in the present case, possession had never been transferred after the sale, and the vendee and his predecessor had silently submitted to the withholding of possession for upwards of eight years, such circumstances, combined with the continuous possession of the vendors, should be taken to favour their allegation that possession had been withheld, because of the non-payment of consideration, and to raise such a counter-presumption as to make it incumbent on the vendee to give evidence that consideration had in fact passed on the sale-deed, and to account for his having been out of possession of the property since the purchase. ACHUBANDIL KUARI v. MAHABIR PRASAD, **8 A. 641=A.W.N. 1886, 242.** [*R.*, 14 B. 222.]

(4)—*Bills of sale—Seller's admission of consideration before Registrar—Suit for possession—Kind of decree.*—Though the seller may have acknowledged receipt of consideration before the Registrar he may yet deny receipt of the same, and evidence is admissible to prove that money was not actually received, with reference to the practice obtaining in the country of preparing the sale-deed and registering it before payment. Under the ordinary rule of law, the purchaser has a right to sue for possession when a part of the consideration has been paid, and the seller to sue for the balance of their price, if there is no evidence of an intention of the parties to the contrary. GOOR PERSHAD v. NUNDA SINGH, **1 Agra 160.** [*F.*, 11 A. 244.]

(5)—*Contract—Agreement to sell—No passing of consideration—Right of owner to sell to another—Right of purchaser.*—A mere agreement to sell without any consideration passing would not bar the right of the owner to sell the property to another; nor would the agreement affect the validity of the said sale. BYUNKUREE DABEE v. TARINEE CHURN CHUKERBUTTY, **7 W. R. 38.**

(6)—*Registered deed of sale reciting payment of consideration money—Sale held void for failure of consideration—Vendor's right to recover possession on setting aside sale.*—In this case the plaintiff, who on the 18th November, 1892, had executed a deed of sale of certain land in favour of the defendant, sued to have the deed set aside, and possession of the land restored to him from the defendant, on the ground that the sale-deed was void for want of consideration. Defendant alleged payment of the consideration and relied on the recital in the deed which was as follows:—"I received the above-mentioned sum (consideration) 12 days ago——I (the plaintiff) have received payment of the money." The Court of first instance, on the evidence, *held* that no consideration whatever passed for the sale, which was therefore void and ought to be set aside, and accordingly decreed possession to the plaintiff. The Lower Appellate Court, though it agreed with the first Court so far as regards non-payment of consideration-money, rejected the plaintiff's claim on the ground stated by it as follows:—"A vendor of immoveable property who has given possession to the purchaser is not entitled to rescind the contract of sale and recover possession, merely because the purchase-money has not been paid. His remedy is to sue for the sum due having a lien on the property for the amount. *Held*, reversing the decree of the Lower Appellate Court and restoring that of the first Court, that there was no contract and therefore no transfer of property. The transaction as it stood purported to be a sale and nothing else and, as a sale, it was void for want of consideration. *Per Farran, C.J.*—The radical distinction between a perfected conveyance and a contract must, in cases similar to the present, be always borne in mind. Conveyances of lands in the mofussil perfected by possession or registration, where the consideration expressed in the conveyance to have been paid has not in fact been paid, must be

Vendor and Purchaser—continued.

——**6.—Consideration**—*continued.*

deemed to fall under the same category as contract void for want of consideration. TATIA v. BABAJI, **22 B 176** [*R.*, 5 Bom. L.R. 177, 1 N.L.R. 146, 16 M.L.J. 524, 6 N.L.R. 98.]

(7)—*Right to refund of earnest money—Agreement for sale of ship—Failure of consideration.*—Plaintiff and defendants entered into an agreement for the sale by the defendants, who were thereby stated to be the absolute owners of a certain ship, to the plaintiff of the said ship. The defendants agreed with the plaintiff that they would, immediately upon payment of the purchase-money, execute to the plaintiff and another a proper bill of sale of the ship. The defendants were unable to get a properly registered bill of sale of the ship made out owing to infirmity of their own title, but were willing, so far as they could, to convey. The plaintiff had made part payment in respect of the price of the ship. *Held* that the consideration had failed, and that the plaintiff was entitled to a refund of the money paid by him in part payment, and of sums disbursed by him under the agreement on account of the expenses of the ship. JASSIM BINSAFF v. ESAU AHMED, **2 Ind. Jur. N.S. 13.**

(8)—*Failure of consideration—Vendee's right to be recouped.*—Defendant's father sold to the plaintiffs certain zemindari property and some arrears of profits alleged to be due from a *lambardar*, and contracted to compensate the vendees of any loss that may accrue to them in regard to the profits. The plaintiffs sued the *lambardar* for the profits. It appeared that the defendants' agent had realized the profits. The plaintiffs then, instead of suing the agent sued the defendants: *Held*, that the suit was rightly brought and was maintainable. HIRA LAL v. BANSIDHAR, **2 Ind. Cas. 252.**

(9)—*Lease of* putnee *not in existence—Refund of* bonus—*Failure of consideration*—Caveat emptor.—If a *putnee* was not in existence when the defendant leased it to the plaintiff, who, on the guarantee of its existence, paid the *bonus*, there is an entire failure of consideration, and the plaintiff is entitled to recover it. The principle of *caveat emptor* is wholly inapplicable to such a case. KRISTO LAL MOITRO v. NOBBO COOMAR ROY, **5 W.R. 232.**

(10)—N.W.P. *Rent Act* (XII *of* 1881), *s.* 7, 9—*Deed of sale of Zemindari lands with* Sir *lands — Covenant to give up ex-proprietary rights in the* sir—*Breach of covenant—Compensation.*—Where the defendants, vendors of certain zemindari property with the *sir*-lands, covenanted to put the plaintiffs in possession also of the *sir*-lands, the sale-deed, so far as it purported to convey the ex proprietary rights to the plaintiffs, was held to be an unlawful and void contract as one in violation of ss. 7 and 9 of Act XII of 1881. The plaintiffs, having entered into a contract which was void at the time it was made, and was known to

Vendor and Purchaser—continued.

——**6.—Consideration**—*continued.*

them to be so, could not claim to be placed in the position in which they were before the contract was made, that is, they could not claim that the defendants, vendors, should refund to them a portion of the sale-consideration proportionate to the value of the ex-proprietary rights of which the vendees had failed to put them in possession. BHIKAM SINGH v. HAR PRASAD, **19 A. 35 = A W.N. 1896, 167.** [*F.*, 22 A 205; *R.*, 6 O.C. 331, 10 O.C. 243, 6 A.L J. 555.]

(11)—*Decree-holder becoming auction-purchaser — Purchase for value.*—A person who purchases at a sale by auction in execution of a decree, although he may be the decree-holder, must be considered in the position of a purchaser for value. Of course, he may, from being the decree-holder, have notice of various matters which any other purchaser would not have notice of, and in that way he may stand in a different position. BROJENDRO COOMAR ROY CHOWDHRY v. THE CHAIRMAN OF THE DACCA MUNICIPALITY, **20 W.R. 223.**

(12)—*Limitation Act* (XIV *of* 1859), *ss.* 5 *and* 13—*Scope—Suit for redemption of mortgage—Mortgage by one member of Hindu family—Benefit of section when can be claimed—Proof—"Purchaser," meaning — Mortgagee, whether purchaser—Mortgage by member of joint family—Release of equity of redemption—Plea of purchase for valuable consideration—Necessary averment—Seisin.*—S. 13 of Act XIV of 1859 deals with suits between one or some member or members of a joint family and some other members of the joint family, complaining of an ouster of some members by or of a failure by the member in occupation to account for profits, or to pay maintenance where it is due, and the section has no application to a suit for redemption brought by one member representing the rest of the members in which the title of the plaintiff to redeem is questioned. The question of joint or not joint property has only to be decided incidentally for the purpose of establishing that title as against strangers [*F.*, 22 W.R. 90 = 14 B.L.R. 87: *Rel. on*, 18 C. 642; *R.*, 9 B. 475, 9 O.C. 147.] Any person claiming the benefit of s. 5 of Act XIV of 1859 should clearly and distinctly show that he fills the position of the person contemplated by that section, as a person who ought to be protected. In order to claim the benefit of that section a defendant must show three things: (i) that he is a purchaser according to the proper meaning of that term; (ii) that he is a purchaser *bona fide*; (iii). that he is a purchaser for valuable consideration. [*F.*, 23 W.R. 99 = 14 B.L.R. 386 = 2 I.A. 48; *R.*, 1 B. 269; *D.*, 19 B. 140]. A 'purchasers' within the meaning of s. 5 of Act XIV of 1859, cannot be a person who purchases a mortgage as a mortgage because that would be merely equivalent to an assignment of a mortgage; it would be the case of a person taking a mortgage with a clear and distinct understanding that it was nothing more than a

Vendor and Purchaser—continued.

——6.—Consideration—*continued.*

mortgage. The term means some person who purchases that which *de facto*, is a mortgage, upon a representation made to him and in the full belief that it is not a mortgage but an absolute title. [*F.*, 9 M.L.J. 93, 29 M. 501 = 16 M.L.J. 358 = 1 M.L.T. 290, 4 A.L.J. 375 = 29 A. 471 = A.W.N. (1907) 133 ; *Appl.*, 2 C.L.J. 448 ; *Cons.*, 9 A. 97, 24 M. 471 F.B. ; *Expl.*, 15 B. 583 ; *R.*, 12 M. 316, 20 A. 482, 2 C.L.J. 546, 9 O.C. 373 ; *D.*, 6 M.L.J. 260, 3 C.L.J. 306 = 10 C.W.N. 738 = 33 C. 511.] Where a member of a joint Hindu family granted a usufructuary mortgage and subsequently without the knowledge of the other members, released the equity of redemption, and the other members had taken proceedings for many years to assert their rights, those who claim from the person to whom the release was made were not purchasers entitled to the protection of s. 5 of the Limitation Act XIV of 1859, and s. 10 of the Act did not apply to such a case, although the mortgagor acted fraudulently. In pleading a purchase for valuable consideration in this country, the very first averment in the plea is that the person selling either was seised, or alleged that he was seised, for an absolute title, and that he contracted to sell, and did sell, and convey that absolute title asserting it to be such to the purchaser who paid his money for that which was thus sold. RADANATH DAS v. JAMES SCOTT ELLIOT, **6 B.L.R. 530, P.C. = 13 W.R. P.C. 24 = 14 M.I.A. 1. = 2 Suth. P.C. J. 397 = 2 Sar. P.C.J. 636.** [*R.*, 6 B. 193.]

(13)—*Chose in action—Assignment—Consideration—Proof—Validity.*—The question whether an assignment of an equity of redemption is or is not made for a valuable consideration is not material in determining the rights of the assignee against a party who holds adversely to the assignor. KACHU BAYAJI v. KACHOBA VITHOBA, **10 B.H.C. 491.** [*R.*, 12 B. 686, 4 C.L.J. 334, 7 O. C. 181, 9 Bom. L.R. 462.]

(14)—*Sale of land—Suit for possession—Consideration, time for payment of.*—In a suit for possession of certain land, the plaintiff basing his title on a sale-deed which contained a covenant to the effect that the purchase-money should be paid on the defendant-vendor registering the deed, where it was found that the latter duly registered the deed but retained it with himself, no consideration money having been paid to him by the plaintiff, the High Court, in order to declare the equities of the parties, remanded the case and called for a finding as to the intention of the parties in respect of the time of payment, and whether (as alleged by the vendor in consequence of non-payment by the plaintiff, the defendant was jeopardised as to his other property and had to sell at a loss. GOURSUHOY SINGH v. SHAIKH FUTTEH ALI, **1 W.R. 38.**

(15)—*Suit for possession under deed of sale—Plea of non-payment of purchase-money, how*

Vendor and Purchaser—continued.

——8.—Consideration—*concluded.*

far affected by subsequent decree in suit for residue of purchase-money.—This was a suit for possession of a share in a mouza under a sale to plaintiff by defendant. The latter pleaded that plaintiff was not entitled to maintain the suit because he had not paid a large portion of the purchase-money. The High Court was of opinion that the contention of the plaintiff on special appeal could not be upheld, *viz.*, that possession ought to have been decreed to him, inasmuch as a decree for the balance of the purchase-money had been passed in favour of the vendor in a separate suit brought by him for that purpose. The defendant had every right to detain the property until the full amount of the price agreed upon had been paid to him ; and, if he had this right, the Judge in the Court below acted properly in dismissing the suit with costs. The mere fact of the decree having been subsequently passed for the residue of the purchase- money in another suit, cannot affect the validity of the defence relied upon in the present case, nor was it shown that the decree above referred to had been satisfied. DOOKHA THAKOOR v. RAM LALL SAHEE, **8 W. R. 218.**

See MORTGAGE—REDEMPTION, 3 Agra 30.

——7.—Fraud.

(1)—*Contract Act*, ss. 17, 19—*Contract induced by fraud—Right to cancel.*—Where there is on the part of the vendor, active concealment of a fact which the purchaser, ought to know and in consequence of it, the purchaser is induced to buy, it is no answer to a suit for recovery of the purchase money to say that the purchaser might have found out the truth by the exercise of ordinary diligence. MORGAN v. THE GOVERNMENT OF HAIDERABAD, **11 M. 419.**

(2)—*Sale of goods—Fraudulent purchase—Vendor's right to disaffirm contract—Re-vesting of property in vendor.*—Where goods have been obtained by means of a fraudulent purchase, the vendor has a right to disaffirm the contract so as to re-vest the property in himself, and that even if the property had passed to the vendee with the consent of the vendor. The property in the goods in dispute in this case was held to remain with the defendant, the vendor, notwithstanding that it might, to some extent, have been placed in the possession of the vendee by being laden on his boat, since the whole transaction of the vendee was a gross and deliberate fraud. Further, in this case, the vendee purchased the goods with the pre-conceived design of not paying for it, and the sale passed no property to him in the goods ; also, upon the contract itself, the property in the goods was not to pass until their price was paid. DURSUN LAL PANDEY v. INDUR CHUNDER BABOO, **6 W. R. 81.**

(3)—*Purchase of immoveable property—Suit against vendor for damages for mis-description*

Vendor and Purchaser—continued.

——7.—Fraud—*concluded.*

of extent of property—Plaintiff to make out a case of fraud.—Where the plaintiff sought compensation for misdescription of the area of the land which he had purchased from the defendant, *held* that, as he was claiming damages for injury alleged to have been suffered by him by reason of the vendor's misrepresentation as to a matter forming one of the bases of the contract, and as there was no special agreement to pay compensation in such a case of misdescription, it lay on the plaintiff to make out a fraudulent representation which he believed as correct which induced him to conclude the contract, and which caused the damage suffered by him. ABDULLAH KHAN v. ABDUR RAHMAN BEG, **18 A. 322=A.W.N. 1896, 81.** [*D.*, 29 C. 370.]

(4)—*Fraudulent execution sale — Resale by ostensible vendee—Good faith—*Onus *of proof.*—Where an execution sale is found not to have been a real one but ostensible only, and the ostensible buyer sells the property to R, *held*, that R is bound to show that he purchased *bona fide* and without notice. BYKANT CHUNDER CHUKERBUTTY v. DHUNPUT SINGH BAHADOOR, **19 W.R. 104.**

(5)—Bona fide *purchase—Question, one of fact—Notice.*—Notice of facts from which the infirmity of the vendor's title might be inferred is evidence of *mala fides*, but is not itself *mala fides*, and the question of *bona fide* purchase is one of fact. SITHA AMMAL v. RENGASAMI AIYANGAR, **5 M.H.C. 385.** [*R.*, 1 B. 269.].

(6)—*Deed of sale in fraud of creditors, property recoverable under, only as against person executing it.*—The decision of the lower appellate Court was impugned on the ground that the Principle Sudder Ameen should not have dismissed the plaintiff's suit for possession of land for the mere reason that the deed of sale of such lands in his favour, having been executed in fraud of creditors, he could not recover under it; and the High Court held that the lower Court's view of the law was good as the defendant was a purchaser from the person who executed the fraudulent deed and was in no way a party to the fraud. There was no evidence that the defendant joined in the fraud, but, even if he had done so, the plaintiff could not in law recover against him under the fraudulent deed inasmuch as he was not the person by whom the deed was executed. KOYLASH CHUNDER MUCKERJEE v. SHUROOP CHUNDER PATWAREE, **6 W.R. 98.**

——8.—Invalid Sales.

(1)—*Legal adviser and client—Contract with persons in fiduciary relation—Mooktear—Presumption*—Onus probandi.—The rule of equity is:—A contract of sale or conveyance entered into by any one with another who stands to him in a relation of confidence or trust (especially if the contract is between attorney or

Vendor and Purchaser—continued.

——8.—Invalid Sales—*continued.*

skilled legal adviser and client in respect of property, the subject of advice) is liable to be called in question by the vendor, and to be set aside at his instance if it be found that the other party made an unfair use of his advantages. In such cases undue influence is presumed until the contrary is proved, and it is incumbent on the purchaser to prove that all the terms of the contract are fair, adequate and reasonable. (9 W.R. 299, *F.*) Where a mooktear, in consequence of proceedings taken by him as the agent of his client got possession of property on her behalf, and sought to retain possession adversely to her on the ground of an alleged contract entered into with her when he undertook to be her legal adviser or manager, the case was held to fall under the operation of the above rule of equity. R.A. PUSHONG v. MUNIA HALWANI, **1 B.L.R. A.C. 95=10 W.R. 128.**

(2)—*Sale by expectant heir of reversionary interest—Sale by youth just out of minority, grounds for setting aside—Burden of proof.*—The peculiar principles upon which Courts of Equity deal with sales by expectant heirs of reversionary interests and according to which, whenever the purchaser fails to prove that he gave a fair value for the property, the sale is to be set aside, even without proof of fraud, can have no application to the case of a sale by a young person of an estate, vested in him, but to be obtained only on litigation. Such a person when he seeks to set aside the sale must establish the fraud, actual or constructive which entitles him to relief. It is not sufficient for him to show that he did not receive the full value of the estate to which the result of the litigation must ultimately show him to be entitled, because the difference between that value and the purchase money may be taken to represent the difference between certainty and immediate enjoyment on the one hand and risk, worry, expense and delay consequent on litigation on the other. In this case the plaintiff sued merely as for a declaration of title to the property in respect of which the defendants pleaded a previous sale not denied by the plaintiff, and it was *held* that before he could ask for a declaration of his title, he was bound to mention in his plaint the fact that he had parted with that title and to allege the particular circumstances, such as fraud or misrepresentation, on which he may rely as entitling him to have the sale itself set aside, and that, if sufficient ground existed for cancelling the sale, the Court may proceed after permitting the plaintiff to amend his plaint accordingly. MIR AZIMUDIN KHAN v. ZIA-UL-NISA, **6 B. 309.** [*R.*, 6 B. 467.]

(3)—*Vendor and purchaser—Misrepresentation by vendor—Suit for damages—Burden of proof.*—In order to maintain a suit founded upon a false representation by a vendor, it is essential that the purchaser should have been induced thereby to enter into the contract and

Vendor and Purchaser—continued.

—8.—Invalid Sales—*continued.*

to act to his detriment. It is incumbent on the plaintiff in such a suit to make out by evidence his right to recover damages on account of the fraudulent representation alleged to have been made by the defendant. Also the injury, in order to support the suit, must have been the immediate, not the remote; consequence of the misrepresentation. Where a representation has been made for a purpose different from the result which is alleged as the ground of damages, responsibility only attaches where the damages are proximate. In the present case, there was no evidence that the plaintiff had been induced to purchase the shares in Bank in question by reason of the defendant's alleged false representations as to the soundness and solvency of the Bank, and the Judicial Committee on appeal affirmed the decree of the High Court, dismissing the plaintiff's suit. MICHAEL MACAULIFF v. CHARLES WILSON, **21 A 209 =26 I.A. 6, P.C. =7 Sar. 405.**

(4)—*Purchaser of property on private sale, suit by, against subsequent Court purchaser—Collusion pleaded by defendant*—Onus *on defendant*—The suit related to a house which the plaintiff alleged he had purchased under a private sale-deed, but which the defendant claimed as purchaser at a subsequent Court-sale. The first appellate Court, on defendant's appeal upheld his contention that the sale to the plaintiff was collusive and colorable, but the High Court held, that there was nothing in the evidence, against the house in dispute having been *bona fide* transferred to the plaintiff, that the *onus* of establishing the collusive nature of the sale to the plaintiff lay on the defendant who alleged it, that he, having failed to prove the same, the lower appellate Court should not have held that the sale to the plaintiff was invalid on account of fraud or collusion. BALVANTRAV v. JIVANJI HORMASJI, **4 B. 77, Note.** [*F.*, 4 B. 70.]

(5)—*Voluntary deed of weak man—Fraud.*—A Court of Equity will not set aside the voluntary deed of a weak man, who is not absolutely *non compos*; but if the weakness is such, and the facts surrounding the transaction and the nature of the transaction itself are such that the Court is satisfied that the person had not, at the time a mind adequate to a business, and that he might be imposed upon, and is not satisfied of the entire good faith of all the parties to the transaction, a Court of Equity will set aside that transaction. RAJENDER CHUNDER NEWGEE v. BHOOBUN KALEE DABEA, **W. R. 1864, 65.**

(6)—*Purchase of property by agent.*—Where the purchaser is himself the agent employed to sell the property, the purchase cannot be supported unless there be satisfactory proof forthcoming, not only that the agent had authority to sell, and that the consideration alleged was in fact paid, but also, that the consideration paid was a fair price for the property. If the purchase had been made by a stranger, then it will be sufficient for the purchaser to show that the sale

Vendor and Purchaser—continued.

—8.—Invalid Sales—*continued.*

was made by a person having authority to sell. It is not necessary to show that the consideration paid by him was one equal to the value of the property. MUSSUMAT RUTTA BEBEE v. DUMREE LALL, **2 N.W.P. 153.**

(7)—*Sale of property—Gross misrepresentation on the part of vendor regarding value—Sale whether void.*—Where there had been a gross misrepresentation by a vendor or his agent in a matter regarding the rental of property sold especially within his knowledge concerning which the purchaser had no adequate means of knowledge, and the sale was brought about by such misrepresentation, the purchaser was entitled to have such sale set aside as void and recover the purchase-money paid by him. MAHOMED SHARE KHAN v. MUSST. SIRDAR BAHOO BAGUM, **1 N.W.P. 84.**

(8)—*Vendor and vendee—Dispossession of vendee—Defect of title—Vendor to bear loss.*—Where a vendor is dispossessed of the property purchased by him in consequence of the vendor's defect of title to the property, the vendor and not the vendee should bear the loss, as the latter put faith in the former's act of selling. AMANOOLLAH v. MAHOMED NASIR, **22 W.R. 442.**

(9)—*Specific Relief Act*, 1877, s. 27—*Trusts Act*, 1882, s. 91—*Purchaser with notice of prior contract to sell.*—The claim of a vendee with notice of a prior agreement to sell cannot, under s. 27 of the Specific Relief Act, prevail as against the prior promisee's right to specific performance. Further, under s. 91 of the Trusts Act, the vendee must be held to have the property for the benefit of prior promisee. NAMASIVAYAM PILLAI v. NELLAYAPPA PILLAI, **18 M. 43.**

(10)—*Transfer of Property Act*, 1882, s. 54—*Sale deed without consideration—No possession given — Subsequent sale—Priority.*—A vendee under a registered sale deed paid no consideration for the sale and allowed his vendor to be in possession for some time. The vendor subsequently sold the property with possession for actual consideration, also by a registered sale deed. *Held*, the prior vendee's claim to the property cannot succeed as against that of the subsequent vendee. SANGU AYYAR v. CUMARASAMI MUDALIAR, **19 M. 61.** [*R.*, 3 O.C. 215, 28 M. 124=14 M.L.J. 493.]

(11)—*Act* XIV *of* 1864, s. 18—*Sale-deed—Consideration paid—Deed not registered owing to seller's fraud—Effect.*—Where a deed of sale was executed and the consideration paid, but the vendor falsely denied both and it was found that he wilfully refused to cause the deed to be registered within four months from the date of execution and that it was owing to his own fraud that the four months had expired: *held* that such a fraudulent vendor cannot avail himself of the provisions of s. 18 of Act XIV

Vendor and Purchaser—continued.

——**8.—Invalid Sales**—*continued.*

of 1864 as a bar to the purchaser's claim. PURGAS RAI v. JUGGUN SINGH, **2 Agra 401.**

(12)—*Sale—Title defective — Concealment—Fraud—Validity of contract.*—Where a vendor, knowing that he had no right or title to property or being cognizant of the existence of incumbrances or of latent defects materially lowering its value, sold it and neglected to disclose such defects to the purchaser, *held* that there was a fraudulent concealment vitiating the contract. PEAREE MOHUN SOOR v. ABDUL SOBHUN CHOWDHRY, **7 W.R. 258.** [*R.*, 20 B. 522.]

(13)—*A sale to defeat sequestration.*—A deed of sale conveying real estate, the property of a defendant in a suit then pending in the supreme Court at *Bombay*. *Held*, in the absence of satisfactory evidence of *bona fide* consideration having been paid by the vendee, to be fraudulent and void as against the creditors of the vendor, and to have been executed for the purpose of defeating a sequestration. A party in possession under a fraudulent deed, to defeat the claim of creditors under a sequestration, is not entitled to any allowance for sums expended by him for improvements upon the estate. MUSADEE MAHOMED CAZUM SHERAZEE v. MEERZA ALLY MAHOMED SHOOSTRY, **6 M.I.A. 27=8 Moo. P.C. 110=1 Sar. P.C.J. 489.**

(14)—*Sale of immoveable property — First and second-purchasers — Right to purchase-money under first sale—Second purchaser not representative of vendor.*—Where the same immoveable property has been sold to two persons and the first sale is found not void by reason of the non-payment of the sale consideration, and the second sale is found to be invalid, as having been made by a person who had no rights and interests remaining in the property, the second purchaser in possession cannot be held to be a representative of the vendor so as to be entitled to receive the sale-consideration found to be still owing to the vendor, and to retain possession of the property in suit until it is paid. RAM LAKHAN RAI v. BANDAN RAI, **2 A. 711.** [*D.*, 18 M. 61.]

(15)—*Sale of property before attachment under money decree—Sale real and for valuable consideration, not affected by intention to defeat creditor.*—The sale of the judgment-debtor's property, not subject to any lien, before the attachment thereof under a mere money-decree, if it were a real transaction for a valuable consideration, would be a valid sale even though made with the intention of defeating the creditor in the execution of his decree. If, however, such a sale were only a colourable and nominal transaction, and not intended to pass the property to the vendee beneficially, but merely for constituting him a trustee to the vendor, the sale would be void, so that the property could be proceeded against by the holder

Vendor and Purchaser—continued.

——**8.—Invalid Sales**—*concluded.*

of the decree for money. SAKHARAM MAHIPAT v. DAWUD VALAD JAWABHAI, **4 B 76.** [*F.*, 4 B. 70; *R.*, 24 C. 825=1 C.W.N. 665.]

(16)—*Sale by Hindu widow—Old and illiterate and near to her death—Fraud and undue influence—Inadequacy of consideration—Sale set aside—Purchase money, proper utilization of terms on which sale will be set aside—Funeral expenses—Repairs.*—Where an old and illiterate Hindu widow, without any professional advice, sold just a few days before her death the only property she had to certain persons who were her only companions at the date of the deed, for an inadequate consideration; *held* in a suit by the reversioners of the vendor, after her death, that the deed, having been obtained under circumstances amounting to fraud was liable to be aside. (*a*) Where it appeared, in the circumstances mentioned above, that a portion of the purchase money went towards the liquidation of the debts due by the vendor, *held*, on setting aside the sale, that the property sold should remain a charge for such portion of the purchase-money. (*b*) And where a portion of the purchase-money was spent by the vendee in the funeral of the vendor, *held* that the property sold should stand charged though not as regards the whole amount purported to have been spent over the funeral, at least to the extent of a sum which, having regard to her position and station in life, should be found to be a reasonable sum for her funeral expenses. (*c*) But, where the vendees had spent some money and made certain repairs to the property, *held* that the sums so spent should not be repaid to them, for they should be taken to have spent the sum at a time when they must be taken to have known that they were fraudulently in possession of the property in question. SADASHIV BHASKER JOSHI v. DHAKUBAI, **5 B. 450.** [*Appl.*, 6 C.L.J. 490; *R.*, 22 B. 818, 3 C.L.J. 260.]

See CONTRACT ACT, 1872, ss. 23, 24, 4 B. 70.

——**9.—Lien.**

(1)—*Constructive notice—Execution purchaser—Lien over property—Purchase of portion of property by lien holder—Contribution.*—An execution purchaser takes subject to all equities affecting the judgment-debtor, and will be bound by constructive notice in the same way as an ordinary purchaser. If a decree declares a lien over A's property for a certain sum in favour of B and subsequently A sells part of this property to B and part to C, B cannot sue to enforce his lien against C's purchase without bringing his own into contribution. RAM LOCHAN SIRKAR v. RAM NARAIN, **1 C. L R. 296.**

(2)—*Title of joint-purchasers on failure of one of them to pay his share of purchase-money.*—A and B jointly purchased a house from C on the understanding that A and B would each pay half the purchase-money and, on entering

Vendor and Purchaser—continued.

——9.—**Lien**—*continued.*

into possession, would divide the house between them. B failed to pay his share of the purchase-money, and C, therefore, retained possession of the half of the house which was to have been taken by B had the purchasers obtained complete possession, allowing A to take possession of the other half. A, thereupon, sublet the portion of the house which the vendor made over to him and realized rent. B then sued A to recover half the rent so realized; *held* that, as there was no actual division of the house between A and B in consequence of their not having obtained complete possession, and as the purchase was a joint transaction, B was, notwithstanding his having failed to pay his half-share of the purchase-money, entitled as joint owner with A of the portion of the house sublet by A to recover half the rent realized by A. MAUNG MEIK v. MAUNG WE, **L.B. R. 1872-1892, 498.**

(3)—*Agreement to purchase—Death of vendor—Suit to administer estate—Claimant, status of.*—The claimant, who on the execution of an agreement for the purchase of certain property deposited Rs. 15,000 as earnest money of his contract, and in part payment of the purchase money, not being satisfied then with the title-deeds supplied by the vendor, entered subsequently into negotiations for the purchase on different terms. On the death of the vendor, the present claim was field in a suit to administer his estate. *Held* that the claimant was entitled to be paid in full his Rs. 15,000 in priority to all other creditors and that the lien which he obtained at first was not lost merely by his entertaining proposals for a new contract on a new basis. KENNY v. THE ADMINISTRATOR-GENERAL OF BENGAL, **3 B.L.R.O.C. 75.**

(4)—*Mortgage lien by deposit of title deeds—Bona fide purchase of property for value by registered sale-deed—Effect on prior lien.*—A person who had deposited the title-deeds of his house with another sold them to a third. The vendor gave a false account of the title-deeds by stating that they had been lost. *Held*, in a suit by the depositee of the title-deeds, that though a security resembling simple mortgage is created by the deposit of title-deeds, the purchaser was a *bona fide* purchaser for value, without notice of the plaintiff's lien, and that he was protected against the claim under the previous lien. BUNSEE DHUR v. HEERA LALL, **1 N.W.P. 166.** [*F.*, 12 W.R. 160; *R.*, 17 A. 252=A.W.N. 1895, 97.]

(5)—*Purchaser of unstored produce—Hypothecation for rent—Act* XVIII *of* 1873 (*N.W.P. Rent Act*), *s.* 56.—A person who purchases the unstored produce of land in the occupation of a tenant, with notice of hypothecation created on such produce for rent by s. 56 of the Rent Act, can only claim it subject to such hypothecation. KINLOCK v. THE COLLECTOR OF ETAWAH, **3 A. 433.**

Vendor and Purchaser—continued.

——9.—**Lien**—*concluded.*

(6) *Mortgage-deed of land, stipulation as to a house in, binding on purchaser of the house without notice.*—Where a mortgage-deed in respect of certain lands contained a covenant relating to a house to the effect that, on any disturbance of the enjoyment of the lands under mortgage, the money might be realised from the house, a subsequent *bona fide* purchaser of the house for value without notice of such covenant would be bound by the stipulation, since the *bona fide* purchase cannot, by itself, operate to secure a larger interest than that which the vendor himself had and was competent to transfer. COOLING v. SARAVANA, **12 M. 69.** [*R.*, 13 A. 28.]

(7) *Encumbered property—Registration—No notice—Concealment of fact by mortgagor—Loss of lien.*—S mortgaged an estate to M by a bond which was registered. After registration, M having obtained a money-decree against S attached the estate in execution, and sold it without making any mention of the mortgage. He afterwards obtained a decree on his registered bond, and sold it to a party who attached the estate in execution. The purchaser of the estate intervened under s. 246, Civ. Pro. Code. *Held*, that the purchaser of M's decree stood in the same position as M who could not set up the lien under his bond as against a purchaser who had been induced by M himself to buy the property in the belief that S's title was a valid one. DULLAB SIRKAR v. KRISHNA KUMAR BAKSHI, **3 B L.R.A.C. 407=12 W.R. 303.** [*N.F.*, 20 B. 290; *F.*, 12 B. 678, 25 A. 309 =19 A.W.N. 87; *R.*, 2 N.W.P. 315, 7 M. 107, 10 C. 609.]

(8)—*For unpaid purchase money—Sale deed containing full acknowledgment of purchase-money—Mortgagee taking the mortgage without notice of unpaid purchase-money—Estoppel—Transfer of Property Act* (IV *of* 1882), *ss.* 3, 55 (4), 55(6).—In a registered sale deed of a chawl it was stated that the vendor had received consideration in full and there was also an acknowledgment of the vendor at the foot of the deed to the same effect. The vendor also parted with all title deeds relating to the property. The vendor subsequently mortgaged the property to the plaintiff who had no knowledge that the full amount of the consideration money was not paid to the vendor though he knew that the vendor was in possession of some portion of the property: *Held*, that the defendant was estopped from contending that she had a lien on the chawl for the unpaid balance of the purchase money by her declaration as to receipt of the whole purchase-money, and by her act of handing over the title deeds. *Per Batchelor, J.*—A vendor of immoveable property who endorses upon the sale deed a receipt for the purchase-money cannot set up a lien for unpaid purchase money as against a mortgagee for value without notice under the purchaser. TEHILRAM GIRDHARIDAS v. KASHIBAI, **10 Bom. L.R. 403=33 B. 53.**

Vendor and Purchaser—continued.

—10.—Notice.

(1)—*Purchase with notice of contested title—Effect.*—A person, who purchases with notice that his vendor's title is contested, must take his chance if that title turns out invalid. BHIKOO SAHOO v. TEIK ALI KHAN, **9 W.R. 86.**

(2)—Bona fide *agreement for sale—Subsequent registered conveyance with possession and with notice—Effect.*—Where a *bona fide* contract, whether oral or written, is made for the sale of property, and another party afterwards buys the property with notice of the contract, the title of the party claiming under the contract prevails against the subsequent purchaser, although his purchase may have been registered and although he has obtained possession under his purchase. Such a case comes under s. 27 (*b*) of the Specific Relief Act. CHUNDER KANT ROY v. KRISHNA SUNDER ROY, **10 C. 710.** [*R.*, 22 B. 46, 4 L.B.R. 26; *F.*, 15 P.R. 1908=27 P.W.R. 1908=97 P.L.R. 1908.]

(3)—*Sale of land—Sale deed registered—Subsequent sale to person without notice—Possession given—Purchase-money utilised for paying prior mortgagee—Rights of subsequent vendee—Priority—Equities of parties.*—This was a suit for recovering the plaint land from B, C, D, and E, plaintiff having purchased the same under a registered sale dated 16-7-1886 from B. B and C remained *ex parte.* D set up a claim to part of the suit land alleging his purchase thereof under a prior registered sale dated 2-9-1885. E claimed ownership of the remaining portion of the land under a sale-deed dated 10-12-1887 from B for Rs. 550. At the time of his purchase, he had no notice of the plaintiff's prior sale, and he had also obtained possession. He contended that, in case possession be decreed to the plaintiff, the latter must repay him his purchase-money (Rs. 550) because this amount had been applied by his vendor in paying off a prior mortgagee of the year 1881, who, at the date of his purchase, was in possession. *Held* (1) that the lands in the possession of D cannot be recovered by the plaintiff, the former claiming under a prior sale which was also registered, (2) that the plaintiff was entitled to the lands in E's possession, because the registration of the plaintiff's prior sale-deed was equivalent to notice to the latter, who cannot claim priority over the plaintiff by reason of the plaintiff's purchase not having been accompanied with possession, and (3) that, because E's purchase money was applied, in part, in paying off a mortgage on the land (of the year 1881), the plaintiff cannot, in equity, recover the property without paying E so much of the purchase-money as was so applied. NARAYAN LAKSHMAN v. BAPU *Valad* HAIBATRAV, **17 B. 741.** [*Disappr.* 7 C.W.N. 11; *R.*, 26 B. 538, 134 P.L.R. 1904.]

(4)—*Vendor and purchaser—Notice of interest—Inquiry—Notice in accurate as to particulars—Notice from person having interest—Discharge of liability.*—If a person knows that another has or claims an interest in property for which he is dealing, he is bound to inquire what that interest is; and if he omits to do so, he will be bound although the notice was inaccurate as to the particulars or extent of such interest. Where a notice comes from the person who claims an interest in the property, it is doubtful whether the purchaser can discharge himself from liability, supposing it is afterwards proved that the person really had an interest in the property. GOBIND CHUNDER MOOKERJEE v. DOORGAPERSAD, **14 B.L.R. 337=22 W.R. 248.**

(5)—*Benami sale—Real owner in possession—Sale by nominal owner—Rights of purchaser.*—Where property in the name of one person is in the possession of another who is the real owner thereof, a person desirous of purchasing the property is bound to inquire what is the nature of the possession of that other, though he may be a purchaser for value. If he does not think fit to do so and purchases the property from the nominal owner, he takes subject to the rights of the person in possession. HAKEEM MEAH v. BEEJOY PATNEE, **22 W.R. 8.** [*Appr.*, 22 W.R. 189; *R.*, 17 C.L.J. 209.]

(6)—*Liability of lands purchased from Hindu devisee for testator's debts, same as in English Law—Liability, when arises—No duty cast upon purchaser to make enquiries—Burden of proof of notice of misapplication of purchase-money—Constructive notice through Solicitor.*—The question, how far lands purchased from a Hindu devisee are liable in the hands of the purchaser for the testator's debts, stands almost on the same footing as a similar question would under the present English Law [*R.*, 9 C.L.R. 173, 10 C.L.R. 113.] The creditor of the ancestor or testator might follow his lands into the possession of a purchaser from the heir or divisee, if it could be proved that such purchaser knew—(*a*) that there were debts of the ancestor or testator left unsatisfied; and also (*b*) that the heir or devisee, to whom he paid his purchase-money, intended to apply it otherwise than in the payment of such debts. [*R.*, 16 A. 483, 25 B. 202, 6 Bom. L.R. 800.] But a purchaser, ignorant on either of these points, has a safe title; for no duty is cast upon the purchaser from the heir or devisee to enquire whether there are any debts of the ancestor or testator, or to see to the application of his purchase-money, even where there is an express charge of debts by the testator on the devised estate, at least when the devisee is also executor. Even where there is an express charge of debts, the burden of proof is entirely on the creditor to show that the purchaser from the devisee had notice that the latter intended to misapply the purchase-money. For such purchaser to be affected with constructive notice through his solicitor, the latter himself must have actual notice. GREENDER CHUNDER GHOSE v. MAKINTOSH, **4 C. 897=4 C.L.R. 193.**

***Vendor and Purchaser*—continued.**

—10.—Notice—*continued.*

(7)—*Court-sale—Judgment-debtor a benamidar—Real owner in possession—Right of purchaser.*—Where property sold in execution of a decree was in the name of the judgment-debtor *benami* for a third person, who was in possession of the property at the time of the sale, the title of the real owner prevailed against that of the purchaser in Court sale. MASSIM MEAH v. SHAM DOSS, **22 W.R. 189.**

(8)—*Sale of property by person without title*—Bona fide *purchase without notice—Purchaser building on land—Real owner standing by—Compensation.*—Where the real owner of property sold by a third person was not aware of the sale at the time it took place (though he came to know of it subsequently) the purchaser claiming to be a *bona fide* purchaser without notice must show that, before he completed his purchase, he did everything that he ought to have done and made all proper enquiries. The property in question in this case, within twelve years before the date of his purchase, having stood in the name of the real owner, it was incumbent upon the purchaser to have enquired how it came to belong to his vendor, how the vendor came to sell it and what was his right to do so. Where the real owner, however, subsequently came to know of it and remained quiet when the purchaser was building upon it, he is bound, before he could claim the property, to make compensation to the purchaser for the money he has expended in improving the property. SAVAKLAL KARSANDAS v. ORA NIZAMUDDIN, **8 B.H.C.O C. 77.**

(9)—*Equities of mortgagor, mortgaged property followed by, even where purchaser is mere agent—Notice to agent notice to principal—Purchaser notwithstanding hostile claims, not to be deemed as innocent purchaser without notice.*—On the sale of mortgaged property in auction subject to the right of redemption of the mortgagor, even when it happens that the purchaser has bought the property at the sale in the capacity of an agent and not as principal, the equities of the mortgagor follow the property. The principal cannot, through the hand of his agent, take the land free from the mortgagor's equities. The case is similar to the one in which notice to the agent of the purchaser is held to be constructive notice to the principal so as to fix him with a trust or a burden relative to the subject of purchase, which, without notice, he would have escaped. If a man buys in the face of hostile claims, he runs the risk of those claims eventually turning out to be well-founded. Whether he at the time honestly thinks he has reasons to disregard them or not, he cannot afterwards set himself up as an innocent purchaser without notice. He must stand or fall by the strength of his own right as against that of the opposing claimant. SEEDEE NAZEER ALI KHAN BAHADOOR v. RAJAH OJOODHYA RAM KHAN, **8 W.R. 399.**

(10)—*Fraudulent conveyance*—Bona fide *purchase—Notice of fraud.*—It is not a legal *sequitur* that, because the sale to A's vendors was fraudulent, A's purchase must be null and void. If A was a *bona fide* purchaser for valuable consideration without notice of the fraud, there is no reason why he should be deprived of the benefit of an honest purchase. SHAIKH GHOLAM AHEA v. DIGUMBAR SINGH, **W.R. 1864, 225.**

***Vendor and Purchaser*—continued.**

—10.—Notice—*continued.*

(11)—*Benami transaction—Sale by benamidar*—Bona fide *purchaser—Subsequent alienation—Sale by minor—Effect.*—A *bona fide* purchaser from the ostensible owner for a valuable consideration without notice of the *benami* nature of a transaction cannot be affected by any subsequent sale of the property effected by the heir of the *benamidar* or the real owner. A purchase from a minor is not *ipso facto* invalid. L. RENNIE v. GUNGA NARAIN CHOWDHRY, **3 W.R. 10.** [*R.*, 18 C. 259.]

(12)—*Sale—Reservation of right of re-purchase—Purchase without notice of reservation—Failure of vendor to pay purchase money within stipulated time—Right of vendor to claim re-purchase from purchaser without notice.*—Plaintiff sold the plaint lands to the first defendant reserving a right of re-purchase. The vendee sold it to another, who purchased it for value and without notice of the reservation of the right. The plaintiff did not pay the purchase money within the stipulated time, but filed the present suit to recover the property under the power of repurchase. *Held* that he had no right to recover the property unless he was relieved against forfeiture. But, as the second defendant had purchased the property without notice of the right of re-purchase, plaintiff could not succeed in the suit. SAMAKAUNDAN v. PERUMAL CHETTI, **2 M.H.C. 14.**

(13)—*Sale of* putnee—*Pleas in former suits for rents, not sufficient notice to* bona fide *purchaser for consideration.*—The defendant in this case was in the position of an innocent purchaser for valuable consideration without any notice of the title of the plaintiffs. Antecedent to the purchase, certain suits had been brought against the defendant's vendor and decreed against him alone, and the pleas set up in those suits for rent were held not to avail the plaintiffs as constituting notice to the purchaser. The plaintiffs, if they had any real interest in the property, ought to have protected it by having their names inserted in the *putnee* pottah, or otherwise, in such a manner that an innocent purchaser could not be deceived. OMUL CHUNDER CHAKLAYNUVIS v. DOBEEOODDEEN, **6 W.R. 318.**

(14)—*Sale without notice of a prior sale—Suit to recover purchase money paid—Fraud* Caveat emptor.—Plaintiff having been deprived of land purchased by him from the defendants, at the suit of one M who had purchased the same land more than 2 years ago, brought the present suit against the vendors for refund of the purchase-money paid by him. *Held*

***Vendor and Purchaser*—continued.**

——10.—Notice—*continued.*

that, if the vendors sold to the plaintiff, keeping back from him the fact of a former sale, in which one of them took part, this would be a fraud upon the plaintiff, which would render the doctrine of *caveat emptor* inapplicable, and would give the plaintiff an equitable right to recover the money obtained from him by fraud. ALA BAKHSH v. NABI BAKHSH, **26 P.R. 1884.** (90 P.R. 1876, *D.*)

(15)—*Purchaser of land—Prior* sankhat.—The plaintiff sued upon a *sankhat* mortgage and got a decree. The property was accordingly attached under that decree. But a claim against the attached property was preferred by a purchaser from the mortgagor subsequent to the *san* mortgage but prior to the decree. The attachment was raised, and the plaintiff filed a suit for a declaration of his right to sell the property, which was thrown out in both the lower Courts. *Held*, in special appeal, that if the *sankhat* was duly executed for valuable consideration, or even if the defendant had notice of it at or before the date of the purchase, the plaintiff was entitled to a decree in the nature of a decree for foreclosure and sale of the property, with costs. GIRDHAR RANCHODDAS v. HACAMCHAND REVACHAND **8 B.H.C.A.C. 75.** [*Diss.*, 6 B. 193; *Not F.*, 13 A. 28=A. W. N. 1890, 216.]

(16)—*Attorney and client — Constructive notice—Secrecy—Practice—Costs.*—A presumption as to notice having been given to his client by an attorney where such notice would involve a confession, by the attorney, of a fraud practised by himself will not be made. The principle of constructive notice is inapplicable where the party seeking the benefit of it has been guilty of secrecy in the transaction, with constructive notice of which he seeks to affect a purchaser. Where the respondent had been guilty of such secrecy he will have to give the appellant his costs in both Courts. HORMASJI TEMULJI v. MANKUVARBAI, **12 B.H.C. 262.**

(17)—*Purchaser for value—Notice of actual or constructive trust.—Notice, sufficiency of.*—The established doctrine of Courts of Equity is that, if a purchaser of an estate at its full value takes with notice of a trust, he is, subject to the protection afforded by the statutes of limitation, bound to the same extent and in the same manner as the person of whom he purchased; for, knowing another's right to the property he throws away his money voluntarily under his own free will. And this applies equally to a mortgagee, who is *pro tanto* a purchaser. The doctrine is applicable to charities in the same manner as between private persons with, it seems, an exception in favour of charities; for it has been ruled that a purchaser without a notice from a purchaser with notice shall be bound by the claim of the charity. Also, if the trustee sells the land to a *bona fide* purchaser without notice and, afterwards himself becomes the owner of the land, though for good and valuable consideration, the trust as to him

***Vendor and Purchaser*—continued.**

——10.—Notice—*concluded.*

revives again, and he shall restore the land to the trust. [*R.*, 1 B. 269, 22 W.R. 8, 8 B. 182, 19 B. 391, 27 B. 408=5 Bom. L.R. 269, 27 B. 452=5 Bom. L.R. 144, 35 B. 217=13 Bom. L.R. 326.] What is sufficient to put a purchaser upon enquiry is good notice, *i.e.*, where a man has sufficient information to lead him to a fact, he shall be deemed cognizant of it. In equity, it is sufficient to charge a man with knowledge that he had that before him, which, if he had used due diligence, would have afforded the knowledge he desires. A person purchasing, where there is a tenant in possession, if he neglect to enquire into the title, must take subject to such rights as the tenant may have. There is no difference in principle between the possession of certain lands as the object of a charitable trust, and under the trust, and the possession of a tenant, as the duty to make inquiry, arises from the fact that the estate is not in the actual possession of the vendor. There is the same equity in both the cases. MANCHARJI SORABJI CHULLA v. KONGSEOO, **6 B.H.C.O.C. 59.**

See DELAY, 1 M.H.C. 62.

See SPECIFIC RELIEF ACT, 1872, s. 27, 27 C. 358=4 C.W.N. 490.

Possession, how far amounts to notice to subsequent transferee — Registration, when equivalent to possession—Registration, whether notice—*See* VENDOR AND PURCHASER — POSSESSION, 6 B. 168.

——11.—Possession.

(1)—*Possession, necessity of, in case of transfers among Hindus—San-mortgage recognised in Guzerat, possession not necessary in case of —Purchaser at sale in execution—Plea of want of notice—Priority of registered over unregistered deeds—Scope of rules.*—The main ground of the general rule as to the necessity of possession being given to transferees is, that it is notice to all subsequent intending mortgagees or purchasers of the title of the party in possession; and the necessity of possession being dispensed with in the case of *san*-mortgages prevalent in Guzerat, such a mortgage, in other respects good, is valid as against subsequent transferees whether or not such transferees have had notice of the mortgage. Consequently, a purchase in execution, without notice, of property mortgaged by a *sankhat* optionally registrable, unregistered and without possession, is to be treated as subject to the mortgage. To hold that a subsequent mortgagee or purchaser for valuable consideration and without notice of a *san*-mortgage is entitled to priority over it, would be *tantamount* to depriving the *san*-mortgage of the benefit of the custom that possession is not necessary to validate such a mortgagee. [*F.*, 6 B. 538, F.B.; *R.*, 20 B 158, U.B.R. 1897—1901, Vol. II, 573, 27 B. 452.] The High Court has, in the rules made by it under s. 287 of Act X of 1877, provided for

***Vendor and Purchaser*—continued.**

——11.—Possession—*continued.*

notice being given to purchasers that the sale only extends to the right, title and interest of the judgment-debtor, and that the Court ordering the sale does not warrant the title. Consequently a purchaser who buys at such a sale an avowedly doubtful title, and pays for it on that understanding, cannot claim to be a purchaser for value without notice. The provisions of the Registration Acts that a document which is registered shall take effect, as regards the property comprised therein, against every unregistered document relating to the same property, can only apply where the two documents are antagonistic, but not where effect can be given to each without any infringement of the other. SOBHAGCHAND GULABCHAND v. BHAICHAND, **6 B. 193. F.B.** (8 B.H C.A.C. 75, *R*; 12 B.H. C. 241, *Diss.*; 9 B.H.C. 60, *Appr.*) [*F.*, 6 Bom. L.R. 1013, 62 P.R. 1908=7 P.W.R. 1908; *Appr.*, 11 B. 588; *R.*, 6 B. 490, 6 B. 495, 8 B. 489. 9 B. 10, 7 M. 248, 10 B. 453, 9 M. 495, 9 A. 97, 13 A. 28=A.W.N. 1890, 216, 17 B. 375, 21 B. 205, 22 B. 945, 29 B. 234=7 Bom. L.R. 200, 142 P.R. 1908, F.B., 1 S.L.R. 104; *D.*, 16 B. 91.]

(2)—*Hindu Law—Possession in transferor whether essential to make valid transfer of property.*—On the contention of the defendants in this case the lower appellate Court held that the plaintiffs' transferor, not having been in possession of the property at the time of the transfer, the plaintiffs' claim was not maintainable. The High Court, however, *held* that the circumstance of the absence of possession in the transferor, at the time he executed the *kararnama*, in question, to the plaintiffs, did not prevent the plaintiffs from seeking to obtain possession from the defendants. The texts of Hindu Law which relate to the transfer of possession in such case must be construed to have reference only to the comparative strength of a title with possession and a title without it. UGARCHAND MANACKCHAND v. MADAPA SOMANA. **9 B. 324.** [*R.*, 18 B. 332; U.B.R. 1897—1901, Vol. II, 574, 27 B. 31, 29 B. 42=6 Bom. L.R. 687.]

(3)—*Hindu Law—Sale—Possession.*—Under the law administered in this Presidency before the Transfer of Property Act came into force, where all was done that the parties contemplated to complete the sale, the title of the first purchaser would not be defeated in favour of the second purchaser merely by reason that the latter did, and the former did not, obtain possession. RAMASAMI v. MARIMUTTU, **6 M. 404.** [*R.*, U.B.R. 1897—1901, Vol. II, 573.]

(4)—*Possession—Necessity of, to complete a sale.*—Under the law current in Madras, possession is not necessary to complete a sale. VASUDEVA v. NARASAMMA, **5 M. 6.**

(5)—*Hindu Law—Sale of land—Delivery of possession not necessary.*—Under the Hindu Law, a sale of immoveable property may be

***Vendor and Purchaser*—continued.**

——11.—Possession—*continued.*

valid without actual delivery of possession. NAGUBAI v. MOTIGIR GURU, **1 B.H.C. 5.** [*D.*, 2 B. 299.]

(6)—*Hindu Law—Sale by vendor without possession—Purchaser not entitled to sue in ejectment—Intention to sell mere right of entry, effect of, on purchaser's rights.*—The execution of a bill of sale by a Hindu vendor does not pass an estate, unless there be a transfer of possession, actual or constructive. Consequently, the sale of an estate by a person who is not in possession cannot operate as a present conveyance, nor enable the purchaser to sue in ejectment. It is, however, settled law that a Hindu, whose estate is in the possession of a trespasser or a mortgagee, may sell his right of entry, as such, or his equity of redemption, as such, and that the purchaser may thereupon sue to eject the trespasser or to redeem the mortgage; and where in the case of a bill of sale purporting, in terms, to convey the property itself, it is clear upon the face of it that the parties intended only to convey a right of entry or an equity of redemption and nothing more, the Court should not lay stress on the mere terms of the instrument, but should give effect to the intention of the parties, and recognise the purchaser's right of action. BAI SURAJ v. DALPATRAM DAYASHANKAR, **6 B. 380, F.B.** [*Not F.*, 9 B. 324; *F.*, 29 B. 42; *Appr.*, 6 B. 387; *R.*, 6 B. 645, 27 B. 31.]

(7)—*Sale of land by a Hindu vendor without possession—Conveyance of mere right of action, right of vendee under.*—A Hindu vendor cannot, by a bill of sale, pass corporeal property of which he is not in possession, though he may convey a right of action, either in express terms or by the use of such language as indicates that that, and nothing else, was the intention of the bill of sale. In this case, the vendors expressly stated that they were out of possession and that the property was in the hands of a mortgagee to whom it had been mortgaged without their authority. So, what was actually contemplated was nothing more than the transfer of the right of entry although the deed professed to convey the property itself, and the vendee in the result acquired the same right of action which his vendors had, notwithstanding that the latter were not in possession at the time of the sale. VASUDEV HARI PATWARDHAN v. TATIYA NARAYAN, **6 B. 387, F.B.** [*Appr.*, 6 B. 380; *R.*, 9 B. 324.]

(8)—*Hindu Law—Alienation—Necessity for possession in vendor.*—Although, according to Hindu Law, transfer of possession is not essentially necessary to give validity to a sale of immoveable property, yet, it is essential that the vendor should have possession at the date of the sale. GIRDHAR PABJARAM v. DAJI DULABHRAM, **7 B.H.C A.C. 4.** [*Appr.*, 10 B.H C. 491; *D.*, 11 C. 121, P C.; *Cons.*, 2 B. 299; *R.*, 6 B. 168, F.B., 9 B. 324, 17 B. 486, 27 B. 31.]

Vendor and Purchaser—continued.

——**11.—Possession**—*continued.*

(9)—*Chose in action— Assignment—Consideration—Proof—Validity—Hindu Law—Conveyance—Possession—Validity.*—The question whether an assignment of an equity of redemption is or is not made for a valuable consideration is not material in determining the rights of the assignee against a party who holds adversely to the assignor. [*R.*, 12 B. 686, 4 C. L.J. 334, 7 O.C. 181, 9 Bom. L.R. 462.] The Hindu Law requires a change of possession to accompany sale in order to prevent successive purchasers from being cheated by successive sales of the same property, and to obviate disputes as to what was really sold. A purchaser, from a Hindu vendor, who buys property without possession, does not obtain a title. KACHU BAYAJI v. KACHOBA VITTOOBA, **10 B.H.C. 491.** [*F.*, 6 B. 330, F.B.; *R.*, 2 B. 299, 6 B. 168, 7 C. 753=10 C.L.R. 129, 11 C. 121, P.C.=11 I.A. 218, 9 B. 324, 17 B. 486, 27 B. 31=4 Bom. L.R. 754.]

(10)—*Sale by father of all his property to son two years old—Father continuing in possession—Presumption as to nature of deed.*—Where a person executed a deed conveying his property to his own son, only two years old, reserving to himself one rupee a day for his own subsistence, and, after the execution of such deed, continued to remain in possession as before, the only inference that could possibly be drawn in the absence of any explanation to the contrary, would be that the deed itself was merely intended to be used as a blind. SREENATH SINGH CHOWDHRY v. SREEMUTTY HUREEPREA, **10 W.R. 449.**

(11)—*Transfer of possession—Sale—Transfer by conveyance—Transfer of Property Act* (IV *of* 1882), *ss.* 54, 55 (6) (*b*).—Where a person sells landed property by receiving the purchase money and handing over possession to the purchaser the vendor has no interest in the property which can be attached and sold in execution of a decree against him, even if no registered conveyance effecting the necessary transfer has been executed. KARALIA NANUBHAI v. MAHSUKHRAM, **2 Bom. L.R. 220=24 B. 400.**

(12)—*Mahomedan law — Sale—Possession with vendor not necessary.*—According to the Mahomedan law, a sale of immoveable property is not rendered invalid by reason only of the absence of possession in the vendor at the time of the sale. In this case, the lower appellate Court had passed its decree applying to a sale between Mahomedans the same rule which has held to govern sales between Hindus, *viz.*, that a bill of sale executed by a person who is not in possession cannot operate as a present conveyance, nor enable the purchaser to sue in ejectment; and the High Court reversed such decree on the ground that the Mahomedan law authorities justify a sale among Mahomedans being held valid as against a third party, even though the vendor was not at the time of the sale in possession of the property sold. **ADAM KHAN v. ALARAKHI, 6 B. 645.**

Vendor and Purchaser—continued.

——**11.—Possession**—*continued.*

(13)—*Registration Act* (III *of* 1877), *s.* 50—*Registered and unregistered conveyance—Priority.*—Where property (worth less than Rs. 100 and whose conveyance in, consequence, is optionally registrable) was conveyed by the owner twice over by an unregistered document and a registered instrument respectively, *held* that the fact of the vendor having given possession to the first and unregistered vendee, though such possession might have continued down to the date of the second registered sale, did not necessarily prevent the operation of the enactment in s. 50 of the Registration Act that "a registered document shall take effect as regards the property therein comprised, against every unregistered document relating to the same property"; and that the only cause in which the title of the prior unregistered purchaser can prevail over that of the subsequent registered purchaser for value is when the latter takes with notice of the former—(*Prinsep, J.*, dissenting). A purchaser under a registered conveyance subsequently executed cannot succeed in a suit to eject one who holds possession under a prior but unregistered conveyance the registration of which is optional *Per Prinsep. J.* NARAIN CHUNDER CHUCKERBUTTY v. DATARAM ROY, **8 C. 597, F.B.=10 C.L.R. 241.** [*R.*, 10 C. 424, 10 C 1073, 1087, 8 A. 540, 13 C. 70, 16 M. 148, F.B., 2 O.C. 74.]

(14)—*Vendor and purchaser—Condition of sale—Acceptance of security by vendor—Suit to realize security.*— The defendant purchased certain jewels at a sale by auction subject to a condition that, if not paid for in three days, the goods should be sold at the risk of the purchaser. Being unable to pay within the time stipulated, he gave a promissory note for the price, upon an agreement that the vendor should retain the jewels for him but should not exercise the power of sale within three days. *Held* that the vendor could sue on the note, though he retained the jewels in his possession under the lien so created. ALLEN HAYES & CO. v. ANUNDO CHUNDER MUNDLE, **Bourke O.C. 156.**

(15)—Bona fide *purchase without notice of prior charge.—Per Peacock, C.J., Norman and Pundit, JJ. (Bayley and Campbell, JJ.*, dissenting)—The fact of a purchase of land under a deed of sale being *bona fide* and without notice of a prior charge does not pass the land free from the prior charge. MAHESWAR BAX SINGH v. BHIKHA CHOWDHRY, **B.L.R. Sup. Vol. 403=1 Ind. Jur. N.S. 122=5 W.R. 61.**

(16)—*Evidence—Purchaser pleading absence of notice of earlier purchase—Burden of proof—Presumption of fraud—Hindu law—Sale—Possession—Registration—Notice.*—In a conflict between two purchasers of the same property, where the defendant pleads a purchase for valuable consideration without notice of the plaintiff's earlier deed, the burden is on the plaintiff to prove notice or the circumstances from which the Court may infer a knowledge or

***Vendor and Purchaser*—continued.**

——11.—Possession—*continued.*

means of knowledge of the previous transaction. The fact that the second deed was executed on the same day as that of the plaintiff, and possession delivered under it, does not give rise to the presumption that the subsequent purchaser colluded with the vendor to defraud the plaintiff. Transfer of possession, as the necessary complement of a contract, is essential, according to Hindu law, in order to effect an absolute change of ownership by sale. The transfer of possession may be replaced by registration or by a decree giving notice to all of the change; but in the absence of some such public indication, the only right acquired by a vendee, as by a mortgagee or donee, is one of an equitable character enforceable only against the vendor and those taking under him with notice, and not against purchasers or sub-purchasers in possession without notice, whose legal title fully acquired cannot be cancelled by the Courts, on the ground of dishonest or unconscionable means having been used in acquiring it. But in a conflict between two registered sale-deeds, executed on one and the same day, the vendee who has perfected his title by taking possession of the property must be preferred. LALUBHAI SURCHAND v. BAI AMRIT, **2 B. 299** =P.J. 1880, 57. [*F.*, 6 B. 165; *Appr.*, 29 B. 42; *R.*, 2 B. 662, 4 B. 126, 4 B. 168; *R.*, 7 C. 753, 8 B. 168, 7 B. 131, 6 M. 404, 7 B. 526, 9 B. 324, 17 B. 741, 18 B. 333, 6 Bom. L.R. 687; *D.* 18 B. 333.]

(17)—*Purchase from benamidar—Good faith—Burden of proof.*—In a suit for recovery of possession of land on the ground of purchase, when it has been shown that the alleged vendor is not the true owner, the plaintiff can only rely on his claim as purchaser in good faith for value from a person who, by the act of the true owners, had become the apparent owner, and in such cases the burden lies upon the plaintiff. RUTTO SINGH v. BAJRANG SINGH, **13 C.L.R. 280, P.C.**

(18)—*Registration of sale-deed subsequent to execution of second sale deed, effect of, on subsequent purchaser with possession.*—Where the defendant was a purchaser without notice (either actual or constructive) of the plaintiff's purchase and had taken the precaution of obtaining possession, both parties having been innocent purchasers and Hindus, it was *held* that the defendant could not be deprived of the benefit of his possession. The registration of the plaintiff's deed of purchase, not having been effected until after the execution of the defendant's sale-deed, could not be taken to operate as notice to the defendant. HASHA v. RAGHO AMBO GONDHALI, **6 B. 165.** [*R.*, 6 B. 168, 20 B. 153, 20 B. 290; *D.*, 30 A. 238=5 A.L.J. 607=A.W.N. 1908, 99.]

(19)—*Possession, how far amounts to notice to subsequent transferee—Registration, when equivalent to possession—Registration, whether notice—Registered and unregistered deeds.*—

***Vendor and Purchaser*—continued.**

——11.—Possession—*concluded.*

According to the Hindu and the Muhammadan law as prevailing in Bombay, possession has been deemed to amount to notice of such title as the person in possession may have, and any other person who takes a mortgage or other charge upon, or purchases, immoveable property without ascertaining the nature of the claim of the person in possession, does so at his own risk. Ordinarily, though not always, possession in the grantee or assignee is deemed essential amongst Hindus and Muhammadans to the complete transfer of immoveable property either by gift, sale, or mortgage. Also, in the decided cases under the Indian Acts of Registration of and subsequent to 1864, which have not (as the prior enactments had done) given priority of rank to priority in registration, registration has still been treated as an equivalent for possession where the instrument earlier in date has been registered prior to the execution of the second instrument, but unaccompanied by possession. Mere registration has not, in England, been regarded as sufficient notice to subsequent transferees. The different rule prevailing in America, *viz.*, that registration, is, in itself, constructive notice to all subsequent transferees, has been adopted by the Courts in Bombay. [*Diss.*, 15 M. 268=2 M.L.J. 95, 23 C 790, 13 C.P.L.R. 43, 27 C. 356=4 C.W.N. 490, 7 C.W.N. 11; *F.*, 18 B. 444, 26 B. 538, 6 Bom. L.R 1043, 6 B. 193, 6 B. 490; *R.*, 9 B. 427, 12 B. 678, 13 B. 229, 17 B. 741, 18 B. 332, 20 B. 290, U.B.R. 1897—1901, 573, 27 B. 452; *D.*, 13 M. 383, 22 C. 185.] The doctrine of *lis pendens* is not founded upon any of the peculiar tenets of a Court of Equity as to implied constructive notice. It is a doctrine common to the Courts both of Law and Equity, and rests upon the ground that it would be plainly impossible that any action or suit could be brought to a successful termination if alienations *pendente lite* were permitted to prevail. It is immaterial whether the alienees had or had not notice of the pending proceedings for, if this were not so, there would be no certainty that the litigation would ever come to an end. LAKSHMAN DAS SARUPCHAND v. BASRAT, **6 B. 168** [*R.*, 10 B 453, 1 C.P.L.R. 19, 13 A. 28=10 A.W.N. 216.]

——12.—Purchase of Mortgaged Property.

(1)—*Mortgage with possession—Assignment of equity of redemption by mortgagor—Notice to mortgagee if necessary—Further loan by mortgagee to original mortgagor, when assignee liable to pay up—Presumption from circumstances and conduct of assignee.*—According to English Law, an assignment of an equitable estate in immoveable property will be complete without notice thereof to the owner of the legal estate. Nor is there any rule of Hindu law requiring that notice of the assignment of the equitable estate should necessarily be given to the first mortgagee in possession whose position may be considered analogous to the holder of the legal estate in English Law. In this case,

Vendor and Purchaser—continued.

——12.—Purchase of Mortgaged Property —*continued.*

the defendant had taken a mortgage with possession of certain properties. The mortgagor then sold the equity of redemption to the plaintiff who allowed the property to continue to remain in the mortgagor's name in the Collector's register. The defendant having subsequently made further advances to the mortgagor on the security of the same properties, plaintiff was held liable to pay the further advances as well before he could redeem the property from the defendants. The assignee's title might be complete in law, notwithstanding the absence of any notice of the assignment to the mortgagee, yet, upon general principles of equity, if the assignee's conduct was such as to amount to a standing by and allowing the mortgagee to make further advances to the mortgagor under the supposition that he continued to be the owner of the equity of redemption, such conduct would have the effect of giving a better equity to the mortgagee, and the mere fact of the assignee allowing the assignor's name to continue to stand in the Collector's register, would amount to such conduct on the part of the assignee. GOVINDRAV v. RAVJI, **12 B. 33.**

(2)—*Hindu Law—Purchase of property already mortgaged—Inquiry of mortgagee—Joint property—Fraud.*— Where a person purchasing property which has been previously mortgaged, has no reason to suppose that his vendor is dealing with family property or is a member of a joint family, and is told by the mortgagee on enquiry that there was no fraud, he is not bound to make any further enquiry. KYLASH KAMINEE' DOSSEE v. TARINEE CHURN BOSE, **20 W.R. 100.**

(3)—*Sale of property subject to charge—Purchaser's rights.*—A party acquiring property as purchaser with notice of its being pledged to another, can no longer rely upon his claims in respect to his own previous hypothecation. JUMMON CHOWDRY v. MUNDUR BEBEE, **W. R. 1864, 144.**

(4)—*Hindu Law—Mortgage—Sale--Estoppel.* —A registered mortgage of a part of ancestral estate executed by the three senior members of a joint Hindu family, the remaining member of which had disappeared, and setting forth the family necessity was presumably a valid transaction. A purchaser at execution sale of the share of the absent member attached and sold by his creditors, could take only subject to the lien already created by the mortgage, and so also every subsequent purchaser. The mere fact that the original purchaser, being the undivided son of the mortgagee, disposed of the property to another without disclosing the previous mortgage to his father, did not create any estoppel against the mortgagee, unless there was active fraud or artifice by the mortgagee directly or indirectly. R.S. JOSHI v. L.B. JOSHI, **2 B. 650.** [*R.*, 8 B. 602.]

Vendor and Purchaser—continued.

——12.—Purchase of Mortgaged Property —*concluded.*

(5)—*Suit by prior mortgagee—Subsequent mortgagee and alienee of equity of redemption not impleaded—Redemption.*—The plaintiff in this suit for possession was the purchaser in execution of a mortgage decree obtained by him. The defendant in the suit resisted him alleging possession under a registered mortgage and an assignment of the mortgagor's equity of redemption. On the question arising whether the defendant could be ousted by the plaintiff without his being allowed an opportunity to redeem the plaintiff's mortgage, it was held that because the defendant should have been impleaded by the plaintiff in his suit against the mortgagor, he could not stand in a better position than he would have been if his mortgage suit had been properly framed with the present defendant figuring as a party thereto; that is to say, the plaintiff was bound to give the defendant an opportunity of redeeming his earlier mortgage. NARU v. GULABSING, **4 B. 83.** [*R.*, 5 M. 184, 17 M. 17.]

See MORTGAGE—SALE OF MORTGAGED PROPERTY, 6 B. 538, F.B.

See REGISTRATION ACT, 1908, s. 17, 12 M. 505.

See REGISTRATION, ACT, 1908, s. 50, 4 B. H.C. A.C. 69.

——13.—Purchase-money and other payments by purchaser.

(1)—*Non-payment of purchase money--Passing of interest--Defective title—Precautions, whether vendor can take advantage of benefit.*—Where, upon a proper construction, the deed is found to be a complete conveyance of the vendor's interest in the land, it invests the vendee with the interest the vendor has in the land, upon its execution and registration. The non-payment of the purchase-money at the time of sale makes no difference in this respect. Where certain precautionary measures are taken by parties to sale to protect the vendee from loss in case the title should prove defective, for the benefit of the vendee this benefit cannot be taken advantage of by the vendor to set aside the sale. KIRPAL SINGH v. MUHAMMAD HUSSAIN, **77 P.R. 1899.**

(2)—*Written contract for sale — Purchase-money not paid—Intention of parties—Refusal to pay purchase-money—Re-sale—Specific performance — Deposit of purchase money in Court.*—Where the parties have entered into a written contract for the purchase of property, the Court is bound to see whether it was or was not the intention of the parties that a complete and binding sale should take place, although the purchase money was not paid. In a suit for completion of a contract of purchase and delivery of property, where the purchaser had refused to pay up the purchase-money unless the vendor paid the costs of registration, and the latter re-sold the property, plaintiff is bound, if

Vendor and Purchaser—continued.

——**13.—Purchase-money and other payments by purchaser**—*continued.*

he has not previously tendered the money, to pay it into Court when he brings the suit. MAHADOO BEGUM v. SYUD HUBEEBOOL HOSSAIN, **15 W.R. 44.**

(3)—*Voluntary payment—Prevention of Court—Sale by payment—Effect of payment whether made by the judgment-debtor or a third party claiming the property.*—Where money is paid into Court by a person interested in property advertised for sale for the purpose of preventing such sale, the payment is not a voluntary payment. OMRITO LALL SIRCAR v. RAMDHUN CHAKEE, **18 W.R. 503.**

(4)—*Sale—Balance of purchase-money—Lien—Subsequent* bona fide *purchaser—Notice of non-payment.*—Persons who allow a property to leave their possession before the purchase money is complete cannot certainly recover from third parties who are purchasers in good faith and for valuable consideration, even if these persons should be held to have had notice of the amount of the consideration money still remaining unpaid. JAGOO KOONWAR v. PARBUTTY KOONWAR, **3 W.R. 138.**

(5)—*Sale of property by Hindu widow—Discharge of debts contracted by deceased husband—Refund of purchase money—Right to—Setting aside sale.*—A party succeeding as heir is bound to pay sums raised on loan by the widow of the person from whom he inherits for the purpose of *bona fide* liquidating his debts. ROOSTUM SINGH v. ALUM SINGH, **1 Agra 291.**

(6)—*Contract— Verbal agreement—Registration—Failure to register—Breach.*—The refusal of one of the parties to a contract to carry out a verbal agreement to register the deed not contained in the contract, does not give the other party a right to put an end to the contract. His proper remedy is to apply to enforce registration under the Registration Act. GURU PRASAD ROY v. RAI BABOO DHANPAT SINGH, **5 R.L.R. App. 46=14 W.R. 20.**

(7)—*Advance of purchase-money—Lien on purchase—Repayment—Suit for possession.*—B advanced money to A for the purchase of an estate. The estate was purchased by A, but it was conveyed to B. *Held* that, before A could maintain a suit to obtain possession of the land, he was bound to pay or tender the money advanced by B. BHOYRUB CHUNDER SEIN v. ANUNDMOYE CHOWDHRAIN, **Marsh 494.**

(8)—*Deposit by purchaser under contract of sale—Contract broken by purchaser's default—Seller not bound to return deposit.*—Even where there is no provision in the contract of sale as to the forfeiture of the deposit made by the purchaser, still when the contract itself has gone off through his default, the purchaser cannot claim back the money deposited by him. Although such a deposit would have the effect of part-payment if the contract be completed, it must also be regarded as constituting

Vendor and Purchaser—continued.

——**13—Purchase-money and other payments by purchaser**—*continued.*

a guarantee for the performance of the contract itself, and consequently, where the purchaser has failed to perform his part of the contract within a reasonable time, he is not entitled, as of right, to a return of the money paid by him to the vendor BISHEN CHAND v. RADHA KISHAN DAS, **19 A. 489=A.W.N. 1897, 123.** [*F.*, 6 M.L.T. 334.]

(9)—*Sale—Failure to give possession—Rescission—Suit for purchase-money—Maintainability.*—The defendant who sold some property to the plaintiff contracted to give possession of the same to him. He having failed, the plaintiff sued for the return of the purchase-money. The defendant contended that the plaintiff's sole remedy lay in a suit for the possession of the property. *Held* that, as the defendant failed to fulfil the contract, the plaintiff was at liberty to rescind the contract and demand the re-payment of his purchase-money. MOHUN LAL v. BEHAREE LAL, **3 N.W.P. 336.**

(10)—*Sale—Purchase* bona fide—*Vendor not having authority to sell*—Caveat emptor.—The plaintiff purchased certain property from L through his son R. There was some dispute as to the purchase and the case was referred to arbitration, when it was held that R had no authority to sell. Plaintiff now sued to recover the purchase-money. *Held*, that the plaintiff was entitled to the refund under the circumstances, as there was no fraud on his part. He was a *bona fide* purchaser and the principle of *caveat emptor* cannot apply to such a case. KISHEN MOHUN SHAHA v. RAM CHUNDER DEY, **3 W.R. 28.**

(11)—*Sale of immoveable property by auction—Vendor refusing to execute conveyance in required form—Suit to recover deposits—Tender of conveyance — Stakeholder.* — In a suit to recover a sum of money paid by plaintiff to auctioneers at the request of the defendant, as a deposit on account of the purchase money of certain premises sold by the defendant to the plaintiff, but which the defendant refused to convey to the plaintiff, save by a deed which should describe the premises by reference to another deed not shown to the plaintiff, the purchaser at the auction, and of the contents of which he had not then any notice, *held* (1) that there was such a refusal by the defendant, that the plaintiff was not bound to go through the useless form of tendering an engrossment of conveyance to the defendant for execution, together with the residue of the purchase-money before bringing his action for the recovery of the deposit. That the money having been deposited with the auctioneer as a stake-holder, and being in his hands, the plaintiff could not recover against the vendor, but should have sued the auctioneer. ESSAJI ALAMJI v. BHIMJI PURUSHOTAM, **4 B.H.C.O.C. 125.** [*D.*, 6 B.H.C. 31.]

Vendor and Purchaser—continued.

——13.—Purchase-money and other payments by purchaser—*continued.*

(12)—*Sale of mortgaged property, payment of advance—Entire responsibility of settling mortgage resting on purchaser — Refusal of vendor to effect mutation of names—Suit by purchaser for recovery of advance not maintainable.*—A person bought certain property which had been already mortgaged to his son, under a registered sale-deed. The purchaser, after paying a small portion of the purchase money to the vendors, retained the balance for the purpose of paying the amount due on his son's mortgage. The deed of sale contained stipulations that the purchaser was to take upon himself the entire responsibility of settling with his son, the mortgagee, and that he was not under any circumstances, to be entitled to reclaim the purchase-money. The vendors, without repudiating the sale or the purchaser's title, refused to effect mutation of names in favour of the purchaser as the latter had not settled the mortgage claims. *Held*, in a suit by the purchaser for recovery of the purchase-money, that such a suit would not lie, as the purchaser's right and remedies are in no wise affected by the refusal of the vendors to effect mutation of names, which was not tantamount to a rescission of the completed contract of sale. NAWAB SIRAJ OOD-DOWLAH v. SHEIKH NOOR AHMUD, **5 N.W.P. 194.**

(13)—*Hindu Law—Sale by co-parcener—Sale set aside — Suit by vendee to recover purchase money—Liability of heirs of vendor.*—Where, in a joint Hindu family consisting of five co-parceners, a sale by two of them in favour of a stranger was set aside on the ground that a sharer in joint property is prohibited by a rule of Hindu law from selling his share without the consent of his co-sharers, and the vendee, thereupon, sued the heirs of the vendors to recover the purchase money, *held*, that the purchase money might be viewed as a debt for which the estate of the deceased vendors was equitably liable and that the heirs of the vendors were severally and respectively answerable to the demand in proportion to the extent of their inheritance. OOMEDEE v. CHEDA LALL, **2 Agra 264.**

(14)—*Vendor and purchaser—Breach of contract—Right of action.*—Defendants received a *mourasi* lease from plaintiff and an advance on account of *salamee* and rent, and agreed that, if they did not register the lease, the whole amount was to be recovered with interest. They failed to register the lease, and plaintiff took possession of the land. He then sued to recover the advance. *Held*, that the plaintiff was entitled to recover the stipulated amount notwithstanding he took possession, though he might be liable to pay the defendant a reasonable amount for the use and occupation of the land while he was in possession. COURT OF WARDS v. NITTA KALI DEBI, **3 B.L.R. A.C. 353=12 W.R. 287.**

(15)—*Purchase from Hindu widow—Alienation set aside by heir—Suit by purchaser to recover money paid on mortgage.*—The plaintiff purchased an estate from a Hindu widow in possession, and after his purchase he paid a debt for which the property sold had been mortgaged by the late husband of his vendor. Subsequently, the daughter of the vendor claimed the property as heir of her father, and recovered possession of it from the purchaser by suit. The purchaser then sued the heir for a refund of the amount of the mortgage debt paid by him. *Held*, that the purchaser was entitled to recover. PORAN MISRA v. HARSARAN MISRA, **8 B.L.R. App. 55.**

(16)—*Implied agreement to register—Refusal to register—Unregistered title—Joining cause of action.*—The principle enunciated in 10 W. R. 51 (**F.B.**) that when a man seeks to establish any right which arises out of his title, that title must be complete, and that, in cases falling within the Registration Act, the title cannot until registration be complete as against a person who has registered his title, applies equally to a suit for possession. When a man enters into a contract of purchase with another, and receives the purchase-money, and the contract is one which, under the law in force at the time, requires registration, he does virtually agree that he will register that contract and so enable the other party to reap all the advantages of it, and is therefore compellable to do so. PRABHURAM HAZRA v. T. M. ROBINSON, **3 B.L.R. App. 49.**

(17)—*Suit for unpaid purchase-money—Purchaser's claim to deduct money paid to protect his own interest.*—In a suit by a vendor for the recovery of unpaid purchase-money, kept in deposit with the purchaser, the latter has a right to claim deduction for the payment which he was compelled to make in order to save the property bought by him from a threatened sale in execution of another decree. KHETSIDAS AGARWALA v. SHIB NARAYAN MURDA, **9 C.W.N. 178.**

(18)—*Execution case struck off improperly—Judge, duty of—Procedure—Purchase of attached property—Compulsory payment—Execution.*—A Judge, finding that he has struck off an execution case improperly, may restore it to the file, and need not proceed *de novo*. Where a plaintiff, purchasing from defendant an estate attached under a decree held by another party against him, pays the amount of the decree and interest, to prevent a sale in execution, he is entitled to recover from the defendant the amount he has paid. MUSST. ZAHURAM v. W. TAYLER, **2 B.L.R. A.C. 86=10 W.R. 380.** [*Appr.*, 11 W. R. 517=3 B.L.R. App. 68; *R.*, 7 C.L.R. 424.]

(19)—*Portion of price left with vendee as security for vendor's clearing incumbrances—Vendee not liable for interest.*—Under the sale-deed in this case, it was the duty of the vendor

Vendor and Purchaser—continued.

——13.—Purchase-money and other payments by Purchaser—*concluded.*

to give a clear title to vendees. Part of the purchase money was left with the vendees, not as a mere deposit of the vendor's money, but for being retained as a security that the property sold should be freed from the incumbrances upon it so that the vendees may get a clear and good title. They were entitled to retain it until the vendor provided the rest of the money necessary for the discharge of the incumbrances. From the nature of the transaction it was not a deposit upon which the vendees would be liable to pay interest unless they refused or omitted to pay the money when they were informed by the vendor that he was prepared to pay the balance necessary for the clearance of the entire incumbrances. MUHAMMAD SIDDIQ KHAN v. NAZIR ULLAH KHAN, **21 A. 223 = 3 C.W.N. 201 = 26 I.A. 45, P.C. = 7 Sar. 472.**

——14.—Purchasers, Right of.

(1)—*Purchaser wrongfully kept out of possession—Title.*—The mere fact that, in consequence of the wrongful act of the vendors, the purchaser cannot obtain possession of the property, does not in any way affect his title to it. MUSSAMUT TUKHEA v. DEO NARAIN SINGH, **24 W.R. 248.**

(2)—*Rights of purchasers—Validity of title.*—Where the rights of persons are purchased not only in an *ousut taluq*, but also in the superior taluqs within which it is situated, the purchaser (if the purchaser of the superior taluqs is valid) succeeds to all the rights which the persons first mentioned had in the disputed lands, whether as *taluqdars* only, or in the double capacity of *talukdars* and *ousut talukdars*. And his title cannot be affected by a former decision to which he was no party. JUGOBUNDHOO SEIN v. BHUGWAN CHUNDER DOSS, **17 W.R. 15.**

(3)—*Breach of contract to sell immoveable property—Vendor's failure to furnish title-deeds—Suit by vendee for specific performance or damages—Duty of vendor to give "title free from reasonable doubt."*—On agreement by the defendant to sell a house to the plaintiff, the latter had paid earnest money at the date of the contract, the balance of the price having to be paid after the execution of the sale-deed. Plaintiffs repeatedly applied to the defendant for the title-deeds relating to the house to enable them to prepare the deed of conveyance. The defendant could not give the above, as she was neither in possession nor had the control of the title-deeds. After further correspondence between the parties, plaintiff filed this suit for the specific performance of the contract of sale with small damages or for damages for the loss of the bargain in its entirety. It was argued that the case came within the principle of law that a vendor is bound to do everything that he is enabled to do by force of his own interest, and also by force of the interest of others whom he can compel to concur

Vendor and Purchaser—continued.

——14.—Purchasers, Right of—*continued.*

in the conveyance, but it was held that because, in this case, the defendant did offer to do all that lay in her power and the plaintiff insisted on something further that did not lie in her power owing to the fact that the title-deeds were with her co-mortgagee, and she could not force him to deliver them, the above principle had no application and no damages were awardable to the plaintiff as for the loss of the bargain contracted for. PITAMBER SUNDARJI v. CASSIBAI, **11 B. 272.** [*R.*, 21 B. 827; *D.*, 32 B. 165 = 9 Bom. L.R. 1087.]

(4)—*Mortgage—Power of sale—Sale—Confirmation by mortgagor—Right of purchaser.*—A mortgage deed contained a power of sale. In exercise of that power, the mortgagee executed a deed of sale to the defendant. The deed professed to be a conveyance in fulfilment of a previous contract of sale made by the mortgagor with the consent of the mortgagee. It was, in its commencement, and conclusion, according to the form of words usually followed when the mortgagor is the vendor, his mortgagee joining in the conveyance. But the words of conveyance were by the mortgagee alone and without any words of confirmation by the mortgagor. *Held* that the purchaser did not by the deed, acquire an indefeasible estate. THOMAS ROBERT DOUCETT v. JOSIAH PATRICK WISE, **3 W.R. 157.** [*F.*, 8 W.R. 72.]

(5)—*Sale by Mahomedan widow out of possession—Suit by husband's heir to recover her share—Rights of vendee.*—Where the rights of a Mahomedan widow, who has been declared entitled to a fourth share of her husband's estate but who has never had possession, are sold and a suit is pending by her deceased husband's nephew to recover that share on the ground that the vendor had been divorced, all that the vendees are entitled to is to represent the vendor in the suit, but possession cannot be given to them until the widow's rights are set at rest in the suit. KHAJAH MAHOMED GOUHUR ALI KHAN v. SHAIKH AZEEMOODEEN, **W.R. 1864, 93.**

(6)—*Purchase of rights and interest of indigo concern—Purchaser entitled only to assets from date of purchase—Sale with retrospective effect.*—Plaintiff sued for the assets of an indigo concern, alleging a purchase by him of the rights and interest of certain persons therein from the Official Assignee. The plaintiff did not produce any deed of sale to show his right to the indigo cash and rents existing prior to the date of his purchase, and his right to them was clearly denied on the averment of a previous sale of the indigo by the Official Assignee to certain other persons. *Held*, that the suit was rightly dismissed, the plaintiff having failed to prove his right to the items stated in the plaint. Nor could the plaintiff claim the indigo and rents appropriated and taken away by the agent of the Official Assignee prior to the date of the sale to the plaintiff, unless the sale of the assets was

Vendor and Purchaser —continued.

——14.—Purchasers, Right of—*continued.*

intended to have retrospective effect. CHUNDER COOMAR ROY v. MR. C.J. WILKINS, **10 W.R. 311.**

(7)—*Sale*--"Milkeut" *and* "hukeequt"—*Rights of purchaser.*—Plaintiff purchased the rights and interests of a former proprietor in a village. The words used in the certificate of sale are that the purchase was of the "*milkeut* and *hukeequt*" of the former proprietor. It was admitted that that would not carry with it the rights and interests of the proprietor in his house or in any gardens attached to the house. But it was contended that it carried with it the rights to an orchard or mango tope planted by the late proprietor. *Held*, that the purchaser did not acquire any such rights. He obtained by his purchase only the proprietary rights. RAM JHAN GUNDEREE v. LALLA GODADHUR LALL, **3 W.R. 32.** [*R.*, 10 W.R. 212.]

(8)—*Mortgage for balance of consideration—Inability of vendor to put purchaser in possession of entire property—Reduction of consideration for mortgage* pro tanto—*Claim to portion of property sold, by third party—Power of purchaser to compromise with claimant—Whether vendor bound by compromise--Clause in conveyance that, if damage was sustained for any other cause, vendor would not be responsible, whether sufficient to relieve vendor's liability under s.* 55, *sub-s.* 2, *Transfer of Property Act—Purchaser's claim for expense of litigation with successful claimant.*—Where a purchaser takes a conveyance and, being unable to pay the whole of the consideration in cash, executes a mortgage security for the unpaid balance, and it subsequently transpires that the purchaser is entitled to a deduction from the price settled because the vendor is unable to transfer what he had agreed to sell, the consideration for the mortgage will also be reduced *pro tanto.* A purchaser may well compromise or refer to arbitration any adverse claim made upon him, which would be covered by the vendor's covenant of title, without giving notice to the vendor of the claim on the proceedings, and he will be entitled to recover under the covenants the amount paid or awarded to be paid by him as compensation and costs to the claimant (*a*). The only qualification to the rule is that, if the vendor has no notice of the claim and of the intention to compromise it, he would be at liberty to prove in defence that the claim was unfounded either wholly or partially or that he could have made better terms than the purchaser, or that the purchaser made an improvident bargain, and in these respects he would have to bear the burden of proof. His position is worse if, with notice of the claim, he declines or fails to remove or contest it himself. He cannot then even allege any such ground of defence. Therefore where the vendor was a party to the suit and quietly acquiesced in the adverse decision by the original Court, he cannot successfully turn round and contend that the compromise, which took place between the claimant

Vendor and Purchaser—continued.

——14.—Purchasers, Right of—*continued.*

and the purchaser in his presence in the appellate Court and without any protest on his part, was improvident. In a conveyance, the vendor declared that he had not made any gift, etc., of the property, and that, if on account of any such incumbrance any damage was sustained by the purchaser, the vendor would indemnify him. This was followed by a clause that, if damage was sustained from any other cause, the vendor would not be responsible therefor. *Held*, that this clause was not comprehensive enough to negative the liability of the vendor, which he may incur, by reason of the breach of the covenant implied, under s. 55, sub-s. 2 of the Transfer of Property Act, to the effect that the seller must be deemed to have contracted with the buyer that the interest he professed to transfer subsisted and that he had power to transfer the same. When reliance is placed upon an express contract to exclude the operation of the statute, the contract to be binding must be expressed in plain and unambiguous language; if the vendor uses expressions reasonably capable of misconstruction or if he uses ambiguous words, the purchaser may generally construe them in the manner most advantageous to himself (*c*). Where an action is brought against the purchaser by a person with superior title, and the former compromises by paying money, he is entitled in an action upon the covenant for title to recover the whole sum so paid and his costs, from the vendor. But this principle is inapplicable to the case where the litigation expenses he incurred were caused in a large measure by the exaggerated claim of the person with superior title, for which his vendor was in no way responsible, and he voluntarily gave up costs which in the event of ultimate success he might have been awarded, and he had realized a substantial amount as profits from the portion of the property which he obtained from his vendor though he finally lost it. In such a case, there will be no failure of justice if the Court refuses to allow him any damages in the shape of litigation expenses against the vendor. DIGAMBAR DAS v. NISHIBALA DEBI, **8 Ind. Cas. 91.**

(9)—*Purchaser agreeing to pay consideration to vendor's creditor—Suit, maintainability of, by vendor, on default of payment to creditor.*—Plaintiff and his brother sold property to first defendant, who, instead of paying the consideration to the vendors, agreed to pay it to a creditor of the vendors. On his default to do so, the creditor brought a suit against the plaintiff and got a decree. In a suit by the plaintiff against the purchaser to recover the consideration with interest, *held*, that the suit is maintainable. RANGANADHAM PANTULU v. BALARAM DOSS, **5 M. L. T. 247=1 Ind. Cas. 621.** (23 M. 441, *F.*)

(10)—*Compensation for deficiency of extent—Purchaser selling in his turn to another—Rights of latter purchaser.*—The respondent conveyed certain land to certain persons, covenanting

Vendor and Purchaser—continued.

—14.—Purchasers, Right of—*continued.*

that, if the land conveyed by him proved deficient in quantity, the purchasers should be entitled to a proportionate refund of the purchase-money. The latter conveyed the same land to the appellants with all their rights under the former sale-deed. The appellants, alleging a deficiency in extent, sued for a refund of a proportionate part of the purchase money. *Held*, that they were entitled to have their claim decreed with interest. KISHEN LAL v. KINLOCH, **A. W. N. 1881, 164.**

(11)—*Sale of several properties under one deed—Purchase of some called in question—Risk to purchaser's rights.*—Where a person obtains a single sale-deed embodying and including purchases of different properties from different owners, he runs the risk of having his title in all the properties shaken, should the genuineness of his purchase as to one of those properties be called in question in a regular suit. RAI SONA BIBEE v. KUNEE MEAH, **8 W. R. 483.**

(12)—*Sale of a fraction of share of estate—Right of purchaser to cultivate proportionate share of land—Favourable rent—Mesne profits—Right to share of rent.*—Where a sale was made without any reservation or restriction, the purchaser of a fractional share of an estate acquires by the sale an undoubted right either to cultivate a proportionate share of the lands cultivated by his vendors on the same conditions that they, as proprietors cultivated it, or to claim his share of the rents of these lands just as he would from any other ryot of the estate, but he has no right to receive from his vendors proportionate mesne profits according to any calculation of what the vendors may have realized by their cultivation. CHYTUN SINGH v. KAYESSUR KOONWUR, **5 W.R. 117.**

(13)—*Sale certificate — Description in excess of order for sale—Right of auction purchaser—Bona fide purchase from auction purchaser—Right of.*—Where property was purchased by the decree-holder and the certificate of sale issued to him comprised property not mentioned in the order for sale the decree-holder purchaser could not claim any thing beyond that comprised in the order for sale. But a *bona fide* purchaser from him without any notice of the irregularity in the proceedings and the difference between the order for sale and the certificate, will not be affected by the irregularity provided that the auction purchaser had obtained possession of all the properties comprised in the certificate of sale and made the sale after obtaining possessions. He would get a complete title to all the property comprised in the sale certificate. GOWREE KUMAL BHUTTACHARJEE v. SURUT CHUNDER DOSS BISWAS, **22 W.R. 408.** [*Expl.*, 27 B. 334=5 Bom. L.R. 217 ; *R.*, 5 Ind. Cas. 935 =7 M.L.T. 191.]

(14)—*Bond from proprietor of indigo factory—No demand for 12 years—Suit against present proprietor— Personal liability.*— Where the holder of a bond from the former proprietor of an indigo factory has made no demand on it for twelve years, or apprised the assignees of its existence as debt due by the factory, he cannot come down on the present proprietors, but must look to the obligor of the bond personally for satisfaction. MUSSAMUT HUBEEBUNISSA v. MR. JAMES COX, **W.R. 1864, 266.**

(15)—*Assignee of lease, liability not undertaken by, for previous rents.*—The claim of the plaintiff in this case was for the rents of his factory which accrued for the 3 years prior to the assignment of the lease of it by P to S who were successive lessees of the factory. The first Court had rightly found that the defendant was no longer manager of P. As regards S, the lower appellate Court had held that, in the absence of any covenant by him to take the liability for previous rents on himself, he could be held liable only for the rent which had actually accrued after the date of the assignment. MUSSAMUT PHOOL KOONWAR v. MR. W. CHARDON, **6 W.R. Act X, Rul., 89.**

(16)—*Sale by co-sharer—Authority to sell property of absent co-sharer — Effect of conveyance from absent co-sharer on previous sale.*—Defendants purchased from some of several co-sharers property which was at the time in the possession of a mortgagee. Plaintiff obtained a conveyance from the missing heir of one of the old proprietors with the object of impeaching the defendant's title as purchasers. *Held*, that the mere fact that the sale to the plaintiff was at the instigation of a former discharged mortgagee did not of itself make it void, if the vendor to the plaintiff had some share or interest in the property by inheritance, and transferred it for valuable consideration (it would have been sufficient if a former debt due by the vendor to the plaintiff formed the whole or part of the consideration), with the intention that it should take effect as a transfer of his right as heir. *Held*, further, that the mere circumstance, that all the co-sharers were indebted was by no means, of itself, enough to confer authority on some only of several co-sharers to dispose of the shares of the absentee co-sharers. MAHOMED FAIZ ALI KHAN v. GUNGA RAM, **1 Agra 112.**

(17)—*Sale before attachment*—Bona fides—*Agreement to sell—Vesting of title.*—A decree-holder attached certain properties as belonging to the judgment-debtor. The plaintiff intervened and filed a suit claiming title to the properties attached under a sale-deed executed by the judgment-debtor, prior to the attachment, *bona fide* and for valuable consideration. Though the execution of the deed was fully established, it was found that it had not been attested by witnesses and that it was in the contemplation of the parties to pass a more formal conveyance. *Held* that the deed was sufficient to bind the property and to give to the party claiming under it a right to demand specific performance

Vendor and Purchaser—continued.

——**14.—Purchasers, Right of**—*continued.*

of the contract and the execution of such further assurances as might be deemed necessary to invest him with a complete title to the property covered by it. LALLA CHOONEELAL NAGINDAS v. SAWAECHUND NAMEDAS, **5 W.R.P.C. 111.** [*R.*, 2 B 299, 4 B. 146, 5 B. 554.]

(18)—*Deposit—Plaintiff failing to perform his part of contract—Claim to refund of deposit—Maintainability of—Deposit of a guarantee—Specific performance.*—A deposit, although, to be taken as part-payment if the contract is completed, is also a guarantee for the performance of the contract, and when the plaintiff fails to perform his part of the contract, he has no right to the return of the deposit. The plaintiff paid a sum of Rs. 1,300, as part of earnest money promised. He then failed to take delivery of the goods but sued for return of the deposit. *Held* that he was not entitled to claim the earnest money paid. ROSHAN LAL v. THE DELHI CLOTH AND GENERAL MILLS COMPANY, LTD., DELHI, **7 A.L.J. 1019=7 Ind. Cas. 794.**

(19)—*Sale—Covenants by vendor—Pre-emption—Decree against purchaser in suit by pre-emptor—Vendee's right and vendor's liability—*"Digar dawedar."—Where, shortly after the defendant sold to plaintiff a house purchased by herself recently and covenanted for title and contracted that she would indemnify the plaintiff against any loss that might arise by reason of the bargain being annulled at the instance of any one, including a pre-emptor (67 P.R. 1881, 4 A. 357, *D*). A third person brought a suit for pre-emption against the original vendee and the parties to the present suit and obtained a decree for possession, *held*, that the plaintiff (purchaser) was entitled to recover from the vendor (defendant) the loss sustained in the transaction. The words, "*higar dawedar.*" in one of the clauses in the vendor's contract, on which the vendee relied, being very wide, they included a person claiming property by right of pre-emption. KHONMON BIBI v. SHAH MALI **111 P.R. 1908=13 P.L R. 1909=4 Ind. Cas. 690.**

(20)—*Obligation of vendor to discharge mortgages on property, agreed to be sold—Breach by vendor of contract for sale—Transfer of Property Act, s. 55 (1) (9)—Measure of damages—Property acquired by Government in the meanwhile—Statutory allowance whether purchaser entitled to get as damages.*—A person is liable for damages arising from a breach of contract. An exception to this rule was laid down in (*a*), that, upon a contract for the purchase of real estate, if the vendor without fraud, is incapable of making a good title, the intending purchaser is not entitled to any compensation for the loss of his bargain. But the vendor is bound to discharge all incumbrances on the property at the date of the sale under s. 55 (1) (9) of the Transfer of Property Act, and a mortgagee's interest being such an

Vendor and Purchaser—continued.

——**14.—Purchasers, Right of**—*continued.*

incumbrance, the vendor is bound to clear the mortgage; for, there is no question of the mortgagor's title which is perfectly good but was subject to the claim of the mortgagee which could be got rid of by payment of his debt. (23 W.R. 261, *D.*) A vendor, who can make a good title but will not, is liable in damages to the purchaser. A vendor, when called upon to do so, refused to complete a contract for sale of certain property, which in the meanwhile was acquired by Government. The vendee brought a suit against the vendor and claimed as compensation the difference between the amount paid by the Government and the agreed price. *Held*, that the plaintiff was entitled to be put as far as possible in the position he would have been in, if the contract had been carried out on the day when it was broken, and that he should get the difference between the agreed price and the amount at which the land was valued in the land acquisition proceedings, apart from the statutory allowance for compulsory sale. NABIN CHANDRA SAHA PRAMANIK v. SREE. MUTTY KRISHNA BARONI DASSEE, **9 Ind. Cas. 525.**

(21)—*Sale set aside—Separate appeals—Refund of purchase money—Procedure.*—Where on a sale being set aside, vendor and vendees appeal separately, the Judge on the appeal of the vendees, in which the vendor is not a respondent, ought not to order the latter to refund the purchase money to the vendees, but should refer the vendees to a separate suit. RAM MOHUN DEY v. KANGALEE, **20 W.R. 149.**

(22)— *Sale of land—Specification of area—Misdescription.*— Where in a deed of sale, of the area of land sold is specified the meaning is that the area was regarded as material by the parties and, unless it is clear that the precise area was not regarded as material, proportional compensation will be awarded to the purchaser of land, the real area of which is found to be less than the area specified in the sale deed. SULEMAN VADU v. TRIKAMJI VELJI, **12 B.H.C. 10.**

(23)—*Purchase with specification and additional description—Rights of purchaser.*—The purchaser of a specified taluq with an additional description that it contains so much land, is entitled to the whole land recovered by the specification, although it may be more than that contained in the description. AMEEROONISSA KHATOON v. KUMOLA KANT ROY, **14 W.R. 117.**

(24)—*Sale-deed registered—Right of purchaser to sue for possession without paying purchase money.*—Where a sale deed has been duly executed and registered, the purchaser is entitled to sue for possession of the property, though he has not paid the full purchase money. YADO RAO v. RATAN, **4 C.P.L.R. 92.** [*Appr.*, 6 N.L.R. 98.]

(25)—*Mortgage-decree—Unregistered purchaser.*—The purchaser, by registered deed, from an

Vendor and Purchaser—continued.

——14.—Purchasers, Right of—*concluded.*

unregistered vendee of the rights of a mortgage-decree-holder, does not take the right to execute the decree as a mortgage-decree. KOOB LALL CHOWDHRY v. NITTYANAND SINGH, **9 M. 839=12 C.L.R. 393.** [*R.*, 13 A. 89, 17 B. 235; *Cons.*, 12 C.W.N. 625, Note.]

(26)—*Deed of sale—Non-registration, Effect of—Payment of purchase-money—Transfer of possession—Evidence.*—On a sale of property the purchaser was given possession of the same after payment of the purchase money by him, but the deed of sale which was made before the Registration Act came into operation, was not registered within the appointed time. *Held* that it did not follow from the above circumstances that the purchaser had acquired nothing by his purchase or that the vendor could resume possession of the property. If there was a contract for sale, and the purchaser paid the money in pursuance of such contract and obtained possession of the property, it was for the vendor to show some title in himself to throw the purchaser out of possession; and that there was no provision in the Registration Act excluding such a sale deed from being adduced in evidence. RAM SURUN DASS v. RAM CHUND, **1 Agra 283.**

(27)—*Vendee of a karaima right, right of, to compel the trustees of a pagoda to admit him to office.*—The vendee of a Karaima right cannot compel the trustees of a pagoda to admit him to the office and give him the emoluments. KEYAKE-ILATA KOTEL KANNI v. YADATTIL VELLAYANGOT ACHUDA PISHARODI, **3 M.H.C. 380.** [*F.*, 6 M. 76; *R.*, 23 B. 131.]

See MORTGAGE — FORECLOSURE, 6 W. R. 230.

——15.—Vendor, Rights and Liabilities of.

(1)—*Duty of person selling property of which he afterwards becomes owner— Applicability to Court-sale.*—The doctrine, that, where a party sells property, of which he is not the owner, but afterwards becomes the owner, he is bound to make good the sale out of his subsequently acquired interest, has no application to the case of a sale, which is made through the Court, at the instance of an execution-creditor and is, therefore, compulsory. ALUKMONEE DABEE v. BANEE MADHUB CHUCKERBUTTY, **4 C. 677=3 C.L.R. 473.** [*R.*, 21 B. 797.]

(2)—*Vendor and purchaser—Title—Failure to pay whole of consideration money.*—When a vendor of land is not paid a portion of the consideration-money, he cannot wholly disaffirm the contract, but he can establish his lien on the land as an unpaid vendor. MOHSUM ALLY v. BALASOO KOER, **2 Hay 576.**

(3)—*Contract of sale—Payment of purchase-money.*—Where there is a complete contract of sale, and the property vested in the vendees they are entitled to have their right to such property declared as against the vendor and

Vendor and Purchaser—continued.

——15.—Vendor, Rights and Liabilities of—*continued.*

against any subsequent vendee of the same property, notwithstanding a portion of the purchase-money may not have been paid. In such a case, the vendor must seek his remedy in respect of the purchase-money by separate suit. KESRI v. GANGA PRASAD, **4 A. 168=A.W.N. 1881, 173,** (N.W.P.S.D.A. Rep. 1864, Vol. II, pp. 576, 617, *R.*)

(4)—*Contract of sale—Buyer entitled to enforce specific performance, whether could be ejected from possession.*—When a buyer of immoveable property of value exceeding Rs. 100 is in a position successfully to maintain a suit for the specific performance of the contract of sale, he can defeat a suit for ejectment brought against him by the seller, if he proves that even after such suit has been brought, he has paid or tendered the amount of the price, and has tendered a proper conveyance of the property for execution by him. In such a case, to give the seller a decree for ejectment of the buyer whom he had placed in possession would be to give the seller a decree in fraud of his contract of sale. BEGUN v MUHAMMAD YAKUB, **16 A. 344, F.B.=A.W.N 1894, 101.** [*Diss.*, 29 M. 336=16 M.L.J. 395=1 M.L.T. 153; *R.*, 6 M.L.J. 33, 21 M. 291, 13 C.P.L.R. 163, 17 C.P.L.R. 21.]

(5)—*Sale of goods—Purchase by commission agent—Unpaid vendor—Agent's lien for moneys paid them—Unpaid vendor accepting bills—Negotiation before maturity—Vendee's insolvency—Goods in hands of carrier—Delivery of possession—Stoppage in transitu—Constructive possession—Sale of goods—Vendor's lien—Attachment by creditor of buyer—Priority—Insolvency of vendee—Vendor's lien—Stoppage in transitu.*—One P, of Cawnpore, sent an agent to Soron, the residence of the plaintiff, to effect purchases in cotton. The plaintiff, at the instance of the person so deputed, made purchases on his own responsibility for payment to the owners of the goods, or with his own funds. The goods were shipped and the insurance was effected in the name of P, and consigned to his correspondents or partners. All funds were supplied both for the purchase of goods and for their carriage and insurance by the plaintiff, and the agent of P apparently did nothing more than engaged the services of the plaintiff and to have approved of the purchases effected by the plaintiff and to have given *hoondees* on his employer's correspondents in payment. The cotton was despatched, but before its arrival at the destination, the purchaser became insolvent and the plaintiff proceeded to take possession of the cotton, but was stopped by the Judge upon the petition of the defendant, a judgment-creditor, who attached the goods. *Held* that (*a*) the plaintiff, though an agent, was in the position of an unpaid vendor; (*b*) that he might detain goods, till he received or was satisfied about the payment of the goods, a completed contract of sale notwithstanding. (*c*) that an unpaid vendor may, in case of the

Vendor and Purchaser—continued.

——15.—Vendor, Rights and Liabilities of —*continued.*

vendee's insolvency, stop the goods sold in *transitu.* Agents for the purchase of goods have a lien on the goods, when purchased, for the monies paid and the liabilities incurred by them in respect to such purchase, and they are not bound to part with the possession of the goods or to deliver them until they are re-imbursed or secured for such advances and liabilities. Where the vendor is not otherwise paid than by having received the insolvent's acceptances, he may stop the goods, if the buyer had in the meantime become insolvent, though he has negotiated the bills and they are still outstanding and not yet at maturity. Whilst the goods sold remain in the hands of a carrier employed to convey them to their original destination as between buyer and seller, no case of constructive possession in the buyer arises unless where the carrier enters expressly into some new agreement distinct from the original contract for carriage. The mere acts of marking and sampling the goods, or giving notice to the carrier to hold the goods for the buyer, though done with the intention to take possession, do not establish a constructive possession in the buyer, or affect the right to stop *in transitu.* Where the right of stopping *in transitu* vests in the consignor, it cannot be defeated *by any claim* made upon the goods in their transit by a creditor of the consignee, as, *e.g.*, by process of attachment at the suit of such creditor; for the vendor's right of stopping *in transitu* is the elder and preferential lien. BHOLA NATH v. BAIJ NATH, **2 Agra 11.**

(6)—*Sale—Consideration—Vendor's lien for unpaid purchase-money.*—In a suit for possession of property sold under a deed, defendant pleaded fraud and failure of consideration. The first Court dismissed the claim holding that there was no fraud, but that the purchase-money had not been paid. The District Judge on appeal reversed the decree of the first Court on the mere ground that the defendant had duly executed the sale deed. *Held* that the vendor's equitable lien for unpaid purchase-money applied to the case, and that, as the District Judge had not found whether the purchase-money was paid or not, the suit should be remanded for a finding by him on that issue. YELLAPPA *bin* BASAPPA v. MANTAPPA, **3 B H.C.A.C. 102.**

(7)—*Lien of unpaid vendor upon property—Right of creditor of such vendor.*—Though an unpaid vendor holds a lien upon the property sold for the consideration-money, a creditor of that vendor cannot claim the same right. HARI RAM v. DENAPUT SINGH, **9 C. 167=11 C.L.R. 339.**

(8)—*Possession with contract to sell—Re-sale.*—A piece of property was agreed to be sold to M and possession was given. M paid only a part of the consideration. So the document was not registered. Now the property was re-sold to A by a registered deed. A sued the vendor and M for possession. *Held*, the owner

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——15.—Vendor, Rights and Liabilities of —*continued.*

had a lien for the unpaid purchase-money on the property, and consequently A could not recover. MOIDIN v. AVARAN, **11 M. 263.** [*R.*, 16 M. 464, 29 M. 336.]

(9)—*Sale of land—Non-payment of purchase-money—Refusal to give possession—Retaking of possession.*—An unpaid vendor of land may refuse to give possession to the vendee till the purchase-money is paid; but after having given possession, he cannot re-take possession for the purpose of paying himself by the usufruct. PREM SOONDUREE DOSSIA v. GRISH CHUNDER BHUTTACHARJEE, **10 W.R. 194.**

(10)—*Sale of immoveable property—Purchase-money not paid—Vendor's remedy.*—On a sale of immoveable property, where the purchaser has been put into possession, the vendor has a lien on the property for the unpaid purchase-money, and may sue for the amount due. But he cannot rescind the contract of sale and recover possession. TRIMALRAV RAGHAVENDRA v. THE MUNICIPAL COMMISSIONERS OF HUBLI, **3 B. 172.** [*F.*, 11 M. 263; *R.*, 5 Bom. L.R. 177, 29 M. 336, F.B.=16 M.L.J. 395=1 M.L.T. 153; *D.*, 16 M. 464, 22 B. 176.]

(11)—*Suit for possession of property purchased—Real vendor's sole liability.*—Plaintiff sued to recover possession of a three-annas share of a certain talook alleging that he had purchased the same from the first defendant and the father of the second and that he had been in possession of the purchased share until dispossessed by the action of a decree under Act X of 1859. Defendants denied the sale to the plaintiff and his possession. The first Court found that the second defendant's father was the only person who sold to the plaintiff, and that he only sold the half of what the deed purported to convey, *i.e.*, a one-anna ten gundahs share, and that the first defendant knew nothing of the deed, nor ever agreed to it. Admitting the above facts but holding the father of the second defendant to have been guilty of fraud, the lower appellate Court passed a decree making the second defendant liable to the plaintiff for the entire three-annas sold. *Held*, on the facts found that the first Court was right in exempting from liability the share of the defendant whose name had been fraudulently used in the alleged conveyance of which he knew nothing. KALEE DOSS MAJOOMDAR v. MEHEROONISA KHATOON, **8 W.R. 482.** [*D.*, 11 W.R. 407.]

(12)—*Dismissal of purchaser's suit for specific performance—Vendor's right to retain purchase-money.*—Dismissal of purchaser's suit for specific performance of a contract of sale on the ground of non-payment of consideration-money would not of itself entitle the vendor to retain the amount deposited with him, and the purchaser would be entitled to a refund of such amount. ALOKESHI DASSI v. HARA CHAND DASS, **24 C. 897=1 C.W.N. 705.** [*R.*, 4 O. C. 145.]

Vendor and Purchaser—continued.

——15.—**Vendor, Rights and Liabilities of** —*continued.*

(13)—*Transfer of Property Act (Act* IV *of* 1882), *s.* 55—*Vendor and purchaser—Covenant for title—Waiver.*— There was no express covenant for title in an agreement of purchase executed by the purchaser after the Transfer of Property Act came into force. The purchaser made part-payments of the purchase-money, entered into possession, effected repairs, and tried to raise money by mortgaging the property. These acts evidenced a waiver on his part of the covenant for title implied in such agreements by s. 55 of the Transfer of Property Act; and notwithstanding a notice by the purchaser that he would not be responsible to the seller for interest on the balance of the purchase-money unless the latter made out a good title, the seller was entitled to interest at the agreed rate up to date of payment with a lien on the property for the balance of the purchase-money. GHOUSIAH BEGUM v. RUSTUMJAH, **13 M. 158.**

(14)— *Unpaid purchase-money — Vendee giving bonds for purchase-money to vendor—Bonds unregistered—Admissibility in evidence.* —Where bonds given by the vendee of certain land, in consideration for sale, to the vendor, are not registered and, as such, not admissible in evidence, the latter is not bound to rely on the bonds in order to establish a charge on the property sold as regards the purchase-money not paid to him. VIRCHAND LALCHAND v. KUMAJI, **18 B. 48.** [*Diss.*, 21 M. 141.]

(15)—*Mortgage—Purchase of equity of redemption—Money kept in deposit for mortgagee—Liability of vendee--Court-fees*--Where a decree was passed only against the mortgaged property and the plaintiff appealed for the defendant to be made also personally liable, the Court, without laying down any general rule, considered the Court-fee paid on the memorandum of appeal, *viz.*, Rs. 10, as sufficient. A vendee of the equity of redemption who withholds the mortgage-money from the vendor in order to pay it to the mortgagee, cannot be considered a trustee of the mortgagee, so as to become personally liable to pay the amount withheld by him to the mortgagee, and the money so withheld cannot be treated as money received for the mortgagee's use, nor can the vendee be said to be agent of the vendor. By virtue of a statement in the sale-deed that the amount is kept as '*amanat*,' and the vendee will pay it to the mortgagee, he represents the mortgagor and not the mortgagee. MUHAMMAD SADIQ v. MUSSAMMAT SAHIB BIBI, **64 P.L.R. 1902 = 54 P.R. 1902.** (6 B. 463, 20 P.R. 1888, 95 P. R. 1895, *R.*)

(16)—*Sale under decree on puisne mortgage notifying prior incumbrances—Purchase by decree-holder—Prior incumbrance subsequently declared invalid—Mortgagor if may recover from purshaser the amount due on prior incumbrances as vendor's unpaid purchase-money.*— Certain villages were sold in execution of a

Vendor and Purchaser—continued.

——15.—**Vendor, Rights and Liabilities of** —*continued.*

decree for sale on a puisne mortgage, and it was notified in the proclamation of sale that there were two prior mortgages on the property. The decree-holder purchased the property after obtaining the permission of the Court. Subsequently it was decided that the two mortgages were invalid. The original mortgagor, judgment-debtor, then brought the present suit to recover the amounts due on the said two mortgages as vendor's unpaid purchase-money, or as money which the decree-holder purchaser ought in equity to pay to the judgment-debtor. *Held*, that, on the sale of property subject to incumbrances, the vendor gets the price of his property whatever it may be, whether the sale be private or by public auction, together with an indemnity against the incumbrances affecting the property. After the purchase is completed, the vendor has no claim to participate in any benefit which the purchaser may derive from his purchase. *Held*, further, that there was no estoppel against the purchaser. MUSAMMAT IZZAT-UN-NISA BEGAM v. KUNWAR PERTAB SINGH, **13 C.W.N. 1143 (P.C.) = 10 C.L.J. 313 = 6 A.L.J. 817 = 11 Bom. L.R. 1220 = 6 M.L.T. 277 = 3 Ind. Cas. 793 = 19 M.L J. 682 = 31 A. 583 = 36 I.A. 203.**

(17)—*Rights* inter se—*Vendor agreeing to pay back the purchase-money if there be any prior hypothecation or vendee be dispossessed—Prior usufructuary mortgagee does not come within the agreement—Vendor not liable—Sale—Agreement—Construction.*—The vendors to a sale entered into an agreement with the vendee that, if by reason of a prior hypothecation or by reason of any kind of interference on the part of the vendors, any portion of the property sold went out of the possession of the vendee, the vendors would return the purchase-money in whole or in part with interest. Prior to the sale, however, the vendors had executed a registered usufructuary mortgage, by virtue of which the property passed out of the hands of the vendee: *Held*, that the usufructuary mortgage did not fall within the purview of the agreement. The vendors were not liable to the vendee in damages, especially when a portion of the purchase-money was still in the pocket of the vendee. The vendee must be presumed to have had notice of the registered mortgage. All that the vendors undertook to do was to put the vendee in such possession as they had, namely, proprietary possession. This was subject to the possession of any prior mortgagee who was already in possession. MUSAMMAT MUMTAZ-UN-NISA v. BHAGIRATH, **6 Ind. Cas. 114.**

(18)—*Decree against vendor after purchase—Effect.*—A person purchasing certain property sometime before the institution of a suit against the vendor, is not bound by a decree passed against the vendor in that suit. SREE-KANT SEIN v. SYUD MAHOMED SHAW CHOWDHRY, **1 W.R. 286.**

Vendor and Purchaser—continued.

——15.—Vendor, Rights and Liabilities of —*continued.*

(19)—*Sale of immoveable property—Marketable title to the satisfaction of purchasers, solicitors to be made out—What should vendor prove when purchaser refuses to perform the contract.* --Where a vendor of immoveable property desires to enforce a contract for sale with a condition that the title adduced should be to the satisfaction of the purchaser's solicitors, he must establish either (*a*) that the solicitors did approve of the title, or (*b*) that there was such a title tendered as made it unreasonable not to approve of it. TREACHER & CO., LTD. v. MAHOMEDALI ADAMJI PEERBHOY, **12 Bom. L.R. 597=7 Ind. Cas. 669.**

(20)—*Purchased goods consigned through Railway—Goods receipt note issued by Railway authorities, not an instrument of title within s. 103 of the Contract Act--Endorsee of Railway receipt, extent of rights of.*—The G.I.P. Railway Company brought this interpleader suit to determine the title to certain goods in their hands, over whoh the first defendant claimed to exercise his right of stoppage as the unpaid vendor of the insolvent consignee and, of which the second defendant claimed delivery as the holder of the Railway receipt issued for the goods and endorsed to him by the consignee to secure an advance made on it. On a reference of several questions made by the Chief Judge of the Bombay Court of Small Causes, the High Court held that the handing over to the consignee's agent, by the first defendant, of the receipt issued by the Railway authorities at the latter's place of business could not be deemed to amount to such a delivery of the goods to the consignee as to deprive the first defendant, his vendor, of his right of stoppage *in transitu* when the goods remained in the custody of the Railway Company before delivery of them over by the Company to the consignee. Nor was the Railway receipt, in the form in which it was issued, an instrument of title within the meaning of s. 103 of the Indian Contract Act. The language of the receipt did not indicate any authority to the assignee by endorsement to so claim and receive the goods as to exclude the vendor's right of stoppage *in transitu*. As regards a portion of the goods, however, which had arrived at its destination and had been loaded by the assignee into carts with a view to carry them off, but which the Railway servants subsequently refused to allow to be taken out of the station yard, in consequence of a telegram from the vendor to stop them, the Court held that the delivery into the carts determined the vendor's right of stoppage in transit, since there was no sufficient notice to the carriers under s. 105 of the Contract Act, as such time and under such circumstances that they might have communicated it to their servants in time so as to have prevented a delivery to the buyer. THE GREAT INDIAN PENINSULA RAILWAY, CO. v. HANMANDAS RAMKISON AND VIRJI HANSRAJ, **14 B. 57.** [*R.*, 1 S.L.R. 1; *D.*, 3 Bom. L.R. 260.]

Vendor and Purchaser—continued.

——15.—Vendor, Rights and Liabilities of —*concluded.*

(21)—*Contract of sale—Delivery by passing a lease—Sale becomes complete—Vendor can sue only for money—Order in possessory suit dissolved by a subsequent contract of sale between the parties—Suit to enforce such a contract—Limitation Act, sch. II, art.* 47.—The defendant sold land to the plaintiffs and delivered possession thereof by passing a lease for it to the plaintiffs. *Held* that the sale was a completed transaction, even though the purchase-money was not paid, and the only remedy of the defendant was to sue for the amount. A contract of sale between parties, subsequent to the order of a Mamlatdar in a possessory suit, regarding the property in dispute, dissolves the order of the Mamlatdar and renders it unnecessary to sue to set it aside. A suit to enforce such a contract of sale is not time-barred by reason of not being brought within three years of the date of the order of the Mamlatdar. SAGAJI v. NAMDEV, **1 Bom. L.R. 5=23 B. 525.**

(22)—*Sale of Government property—Conditions of sale—Sale to highest bidder—Purchaser, a rebel—Right of Government to annul sale.*—Where the Collector with the sanction of the superior authorities made it a distinct condition of sale that the property should be sold to the highest bidder without any restriction as to the purchaser not being rebel or not, the Government are not at liberty subsequently to the sale to disaffirm and annul the sale on the ground that the purchaser was a rebel. The Government like any other seller may impose whatever conditions it pleases, in reference to property which it offers for sale, prior to the sale; but when it has expressly stated that it will not allow a particular objection to operate, it is not at liberty subsequently to the sale to impose a condition on the sale not only novel but directly at variance with the terms under which it offered the property for sale. SEVA LALL v. SHEIKH MAHOMED, **2 Agra 160.**

See PUNJAB ACT IV OF 1872, s. 17, 27 P.R. 1874, 62 P.R. 1879.

See PRE-EMPTION—LOSS OF RIGHT TO PRE-EMPT, 39 P.R. 1867, 4 P.R. 1869.

See PRE-EMPTION—MISCELLANEOUS, 34 P.R. 1870.

——16—Miscellaneous.

(1)—Caveat emptor—*Warranty of title—Purchaser's duty.*—According to the rule of *caveat emptor*, the buyer is bound by law to take care of himself; he is bound to see that what he buys he buys after satisfying himself that there is a good title. If a person choses to buy property without looking into the title, he does so at his own risk, and the law will not help him to set aside his bargain. If a deed of purchase has been once executed, unless there is an eviction by the vendor or some person claiming under him, there is no right of action against the vendor and the purchaser is without remedy. The purchaser is not only bound to look to his

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——16.—Miscellaneous—*continued.*

own title, but to see that he is properly indemnified by the covenants in the deed. GOUR KISHORE SHAHA v. CHUNDER KISHORE DUTT MOJOOMDAR, **25 W.R. 45.**

(2)—*Land sold without warranty—Purchaser with invalid title—Liability of vendor.*—In the absence of fraud or express warranty of title in a sale of land, the vendee cannot recover from the vendor the expenses incurred in defending a suit for possession brought against him by a third party having a better title. NEELMONE SINGH DEO v. GORDON STUART & CO., **1 Ind. Jur. N.S. 356=6 W.R. 152.**

(3)—*Doubt as to plot sold—Alteration in registered deed—Duty of Court.*—Improper registration by a Registrar could not afford any presumption of fraud against the parties to a deed, nor could fraud be imputed from the mere fact of a deed containing additions, before some conclusions have been arrived at as to the circumstances under which they may have been made. Where the defendant alleged that the plot of land sold was not that sued for, but some other different plot, though the number and extent given of the land were those of the land sued for, but the other descriptions of the plot tallied with what was alleged to be sold, but for some addition to the description which, the defendant alleged, was made by the Registration officer and the plaintiff colluding with each other, *held* that it was important for the decision of the case to find out when and by whom the additions were made, and that the case should be remanded to the lower appellate Court for deciding that point. GIRDHARI LAL v. JAUNATUNNISSA, **A.W.N. 1882, 7.**

(4)—*Purchase in consideration of covenant—Purchase in consideration of sum of money.*—A conveyance or sale in consideration of a covenant to pay a sum of money in the future is different from a sale in consideration of money which the purchaser covenants to pay. The distinction between the two may seem fine, but it is a real distinction. The latter gives rise to a charge while the former does not. WEBB v. MACPHERSON, **31 C. 57, P.C.=30 I.A. 238=8 C.W.N. 41=5 Bom. L.R. 838=13 M.L.J. 389=8 Sar. 554.**

(5)—*Purchase* bona fide *for value without notice*—Bona fides—*Purchaser for value—Absence of notice.*—A person who alleges himself to be a *bona fide* purchaser for value without notice must specifically plead that in his written statement or in the plaint as the case may be. If he does not plead all that, he will not be allowed at the hearing to go into evidence on that point. It is not sufficient for a purchaser alleging himself to be *bona fide* purchaser for value without notice to plead simply that he is a purchaser for value and *bona fide* and without notice. NULJI JETHA AND CO. v. MACLEOD, **5 Bom. L.R. 991.**

(6)—*Kobala—Suit for possession—Proof of delivery as complete instrument.*—In order to

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——16.—Miscellaneous—*continued.*

succeed in a suit for possession under a kobala, it is not enough that the plaintiff proves the writing and signature of the kobala; he must also show that the kobala was delivered as a complete instrument. SHAIKH OMED ALI v. NIDHEE RAM, **22 W.R. 367.**

(7)—*Creation of lien—Title—Notice of charge—English law as to right of* bona fide *purchaser for value without notice.*—By contract and deposit of title-deeds, B charged certain land in favour of A as a security in respect of the non-delivery of the title-deeds of an estate bought by A from him. After the creation of this charge, the land was transferred by B to C. The Sudder Court having decided that the contract was not operative as an hypothecation or pledge, even between the parties to it and that A had no right of suit against C, to whom the land had been transferred: *Held* by the Privy Council, reversing that decision, that the agreement created a lien on the land, and that no positive law was shown to forbid giving effect to such agreement. The owner of property subject to a lien or charge can in general convey to another no title higher or more free than his own; it lies always on a succeeding owner to make out a case to defend such prior charge. The law in India does not enable a purchaser of land to look only to the apparent title in the Collector's books, or the presumed title of the owner in possession; and it is beyond the province of a Court of justice to give effect to the title of such a purchaser to the extent of defeating a prior lien or charge conceding that a purchaser for value *bona fide*, and without notice of the charge, would have an equity superior to A's right. *Held* that a purchase in good faith by C had not been proved. If the English doctrine on this subject be adopted, as the rule prescribed by justice, equity, and good conscience, its qualifications and restrictions should not be rejected. VARDENSETH RAM v. LUCKPATHY ROYJEE LALLAH, **Marsh. 461=9 M.I.A. 303=1 Suth P.C.J. 480=1 Sar. P.C.J. 857.**

(8)—*Vendee of property subject to lien—Decree declaring holder of lien to be owner—Vendee, not party to decree—Ejectment of vendee under decree, wrongful.*—A vendee of property, subject to a lien, cannot be turned out upon a decree against other people declaring the holder of the lien the owner of the property; and if he is ejected, such an ejectment is wrongful and is brought about by a gross misuse of the Court's process, and he can sue to recover possession. MRS. MARIA VARDEN SETH SAM v. APPUNDI IBRAHIM SAHIB, **6 M.H C. 75.**

(9)—*Contract—Sale of goods—Lien for unpaid purchase-money—Consideration agreed to be paid at a future date.*—The defendants sold certain goods to the plaintiff, receiving a part of the consideration at the time of sale and agreeing to receive the balance by instalments, and the goods were agreed to be delivered, some on demand and the rest on a date before the

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——**16.—Miscellaneous**—*continued.*

date of payment of first instalment. The defendant having failed to deliver the goods, the plaintiff claimed damages. *Held*, that the plaintiff was entitled to sue. NARSHING DAS v. SHAMAS DIN, **207 P.L.R. 1911.**

(10)—*Contract—Consideration to be paid to vendor's creditor—Failure — Damages.*—A vendee's failure to pay the purchase-money to the vendor's creditor according to the stipulations in the contract between them, cannot give rise to a cause of action for the vendor to sue the vendee for damages. The vendor in order to maintain a suit must prove special damage. The mere execution by the vendor of a promissory note for interest due to his creditor subsequent to the sale, without actual payment, is not proof of such damage. DORASAMI TEVAR v. LAKSHMANAN CHETTY, **14 M.L.J. 285.** (26 M. 322, *R.*) [*R.*, 8 M.L.T. 188.]

(11)—*Consideration to be paid to a third person—Vendee's default to pay—Vendor entitled to recover it—Breach of contract—Damages.*—Where A transfers two decrees to B in consideration of a certain sum of money, which B agreed to pay to two persons named by A, and where B fails so to pay them within a reasonable time, A is entitled to recover the sum from B. It is no answer to his claim to say that he has not paid those two persons, and therefore suffered no damage by B's failure to pay. RAGHUNATHA CHARIAR v. SADAGOPA CHARIAR, **2 M.W.N. 1911, 227.**

(12) — *Defect of title — Fraudulent concealment—Damages—Defect— Fraud.*— Where the sale-deed of a house in the mofussil, contained no covenant for title and the purchaser was ejected by a co-parcener of the vendor under a decree for partition obtained against the vendor, the vendor is guilty of fraudulent concealment, if he concealed the existence of the decree, and is bound to refund to the purchaser the purchase money. [*Cons.*, 20 B 522, *R.*, U.B.R. 1892—1896, Vol. II, 615.] Even though the purchase-money has been paid, and the conveyance executed by all the parties, yet, if the defect do not appear on the face of the title deeds and the vendor was aware of the defect, and concealed it from the purchaser, he is in every such case guilty of fraud, and the purchaser may, according to English law, either bring an action on the case, or file his bill in equity for relief. In the absence of positive law, the Courts in India are bound to apply the principles of good conscience and equity. GAJAPATHI v. ALAGIA, **9 M. 89.**

(13)—*Sale—Vendee's absence, no evidence of laches—Non alteration of registry, effect of.*—A person purchased land and entered into possession, and about four years afterwards, went abroad and, during his absence, the vendor sold the land to another who, finding the registry still in the name of the vendor, purchased from him. *Held* that the original vendee's title should prevail over the subsequent vendee's, for, the mere absence of the prior vendee, probably on his own affairs, was not even evidence of laches, and the non-alteration of the registry, although it may be important as a matter of evidence if the question had been whether a sale actually took place at the date stated, could have no influence as a matter of law when it has once been found that the sale really took place. VIRABHADRA PILLAI v. HARIRAMA PILLAI, **3 M H.C. 38** (1 M.H.C. 62, *overruled*). [*R.*, U.B.R. 1897—1901, Vol. II, 573.]

(14)—*Recovery of purchase-money—Mutation of names.*—In a suit by the plaintiff to recover the purchase-money paid for certain lands sold to him by the defendant, on the allegation that his name was not registered in the Collectorate, and possession was not given to him, *held* that the plaintiff was not entitled to cancel the sale deed, and recover the purchase-money since-under the sale-deed, the defendant only undertook to apply to the Collector for mutation of names. GEDEERA KOLITA v. DEBENDRO NARAIN KONWAR, **25 W.R. 352.**

(15)—*Contract made by vendor—Purchaser having notice of the contract—Effect of the contract on the purchaser—Co owners.*— A party cannot be permitted to use land in a manner inconsistent with the contract entered into by his vendor, with notice of which he purchases. The aid of this principle can only be succesfully invoked in a limited class of covenants, and can in no case be granted to an obligation which would debar a co-owner of his inherent right to demand partition. AMOLAKCHAND v. YESHWANT, **2 Bom. L. R. 884.**

(16)—*Vendor under a registered deed of sale—Deed of sale remained with vendor—Want of possession—Failure of consideration—Intention to transfer not given effect to—Subsequent sale to temple under registered deed.*—S executed and registered a sale-deed in respect of a house in favour of first defendant: but neither the deed of sale nor possession of the house passed to the first defendant, the vendor having retained with himself both the deed and the possession of the house. Subsequently, S sold the house to a temple, and attorned to the temple authorities as a tenant. He was in possession as a tenant till his death. Since his death, the first defendant, the vendee, under the first deed of sale, got possession of the property, the subject of the first sale. The temple authorities now sued for possession basing their title on the sale-deed by S in favour of the temple. The first defendant contended that the first sale in his favour was for cash paid as consideration. This fact was found against him. Plaintiffs contended that the sale in favour of S was not given effect to. It was found that the sale was in consideration of S's marrying first defendant's daughter, and that the marriage having fallen through, the sale did not take effect. *Held*, that, the transfer having been intended to be effected only in the event of the marriage taking

Vendor and Purchaser—continued.

——**16.—Miscellaneous**—*continued.*

place, and the marriage having fallen through, the intention to sell was not carried out and no property passed to the first defendant. (17 M. 146, *R.*) *Held*, further, that though the handing over of the sale-deed after registration was not necessary to vest the property in the vendee, it could not be laid down as a general rule that mere registration of an instrument operates to transfer the property. RAMALINGA MUDALI v. AYYADURAI NAINAR, **28 M. 124 = 14 M.L J. 493.** (18 M. 61, 27 C. 7, *R.*) [*R.*, 32 M. 325 = 17 M.L. J. 386 = 4 M.L.T. 279 = 5 M.L.T. 255.]

(17)—*Transfer of proprietary right when vendor undertakes to pay land revenue—Recovery of sum due on account of land-revenue, suit for, by lambardar against co-sharer—Covenants affirmative and restrictive—Covenant annexed to the ownership of the property sold by the vendor—Transfer of Property Act, s.* 40.—In November 1896, S sold some plots of land included in his share in a village to the respondent. In the sale-deed it was stated that four plots of the land sold were *bila lagani* and one of the stipulation was "if in the present settlement any revenue be assessed upon and become payable in respect of these four plots, the purchaser shall have no concern with it. I will pay it myself the purchaser and his heirs will hold the land free of revenue." In January 1900 S sold the remainder of his share to the appellant. In the sale-deed there was no mention whatever of the sale to the respondent or of the stipulations set out above. At the recent settlement the plots held by the respondent were formed into a "sub-patti" and assessed at Rs. 6. The appellant sued the respondent for recovery of Rs. 7-8-7 alleged to be due on account of land-revenue, lambardari dues, etc. The respondent contended that he was an under-proprietor not the proprietor of the land and therefore not a co-sharer of the appellant and further that the appellant was bound by the agreement made between the respondent and the vendor. The equitable doctrine is that a person who takes with notice of a covenant is bound by it, but this applies only to restrictive and not to affirmative covenants. *Held*, therefore, that the vendor's covenant was distinctly affirmative, not restrictive and was not binding upon the appellant. *Held*, that the vendor had parted with all his rights in respect of the land sold to the respondent, who became full proprietor thereof, and that the existence of an agreement by the vendor that he would pay any revenue that might be assessed on the land could not affect the completeness of the transfer of proprietary right. *Held*, further, that the vendor's agreement to pay the revenue was not binding upon the appellant. It was not a covenant of a restrictive character nor was it annexed to the land transferred to the appellant; therefore s. 40 of the Transfer of Property Act did not apply. RAMADHIN DITCHIT v. SHEORATAN SINGH, **6 O.C. 184.**

Vendor and Purchaser—continued.

——**16.—Miscellaneous**—*continued.*

(18)—*Partition, re-adjustment of shares on—Sharer—Purchase of lands in the common property — Subsequent partition — Share of lands sold falling to the lot of purchaser—Suit for damages.*—Where a sharer in certain property purchases from his co-sharer some lands forming a part of the property, and in the subsequent partition suit between the sharers of the property, a portion of the lands sold falls to the share of the purchaser himself, it is not open to the purchaser to claim damages from his vendor with respect to the portion which so fell to the share of the former. SHIVRAM v. BAL DAJI, **4 Bom. L.R. 310 = 26 B. 519.**

(19)—*Arbitration award subsequent to sale confirming and ratifying vendor's act—Estoppel —Vendee, though not a party to award, entitled to rely thereon as estopping the other parties thereto from disputing vendor's title.*—The widow of a separated Hindu executed a deed of sale of a certain share in the offerings of a Hindu temple, and the deed purported to pass the whole interest in the share, and contained a recital that the sale was made to enable the widow to discharge her husband's debts. Subsequent to the sale, an arbitration, to which the vendee was not a party, took place between the widow and certain other persons, and the award gave to those persons the one-third share which remained with the widow, and decided that the deed of sale should be treated and considered as a good transfer of the other two-thirds. *Held* that the award confirmed and ratified the title and act of the widow vendor and, that the vendee, though not a party to the award, could rely on it as estopping the other parties from denying his vendor's title as between them and her, and an answer to any case which they might set up in question of his title. SRI GOBIND v. GANESH, **A.W.N. 1890, 78.**

(20)—*Transfer of Property Act*, 1882, *s.* 43 —*Specific Relief Act, s.* 18 (*a*).—The plaintiff purchased the undivided share of the first defendant whose family consisted only of his paternal uncle and his son whom the first defendant had adopted. The uncle died pending suit, making a gift of his share to his daughter-in-law. *Held*, that the gift by the undivided uncle was invalid as against the plaintiff, and, as his undivided interest would therefore pass to the first defendant and his adopted son, the plaintiff was entitled to a moiety of the property. VIRAYYA v. HANUMANTA, **14 M. 459.**

(21)—*Sale of shares deposited with bank for advance—Depreciation of security—Objection to disclose position of shares.*—Where a contract has been made for the sale of shares deposited with a bank as security for an advance, the vendor is not bound to disclose the fact to the purchaser when there can be no reason to anticipate such a depreciation of value in the shares as would entitle the bank to refuse to

Vendor and Purchaser—continued.

——16.—**Miscellaneous**—*continued.*

transfer. NARAYAN SUCCARAM v. BHAWOO DAJEE, **1 Ind. Jur. N. S. 154.**

(22)—*Gift*—Bona fide *purchaser for value without notice—Possession.*—Certain properties, having been gifted away by the husband to the wife, were subsequently sold by him to the defendant who was also put in possession. Some years afterwards, the wife sued the defendant for recovery of possession of the properties. *Held* that as the wife chose to stand by for years without asserting her rights, but allowing the husband to sell the properties and put the purchaser in possession, she had no equity to come into Court and eject those who had purchased *bona fide* in ignorance of her ever having had any title. SOOJAT MAHOMED v. MAHOMED TORAB, **25 W.R. 281.**

(23)—*Vendor and vendee—Vendor taking a mortgage—Sale-deed not registered — Suit on mortgage maintainable.*—Where land has been sold and possession handed over to the purchaser, and the vendor takes a mortgage for the sale price, the fact that the sale-deed was not registered is no bar to suit on the mortgage, and the vendor is well entitled to show that it was through the purchaser's default that the sale-deed was not registered. G. RAMA AIYAR v. V. VENKATARAMA AIYAR, **2 M.W.N. 1911, 241.**

(24)—*Sale prior to mortgage—Sale, whether can be impugned.*—The plaintiffs sued for confirmation of possession of certain property purchased from their brother on the 3rd December, 1868, the deed being registered the next day. The defendants were mortgagees from the same person under a deed dated the 16th December, 1868. They sued on their mortgage and got a decree, and, in execution thereof, attached the property in dispute. A claim petition by the plaintiffs was dismissed on the ground that the sale-deed was fictitious, and hence the present suit. *Held* that the defendants were competent to show, if they could, that the sale made a few days before the mortgage was fictitious and that possession never left their mortgagor, and, that, even supposing that the defendants had means of knowledge of the prior sale, owing to the fact that the deed was registered one, they were in no way hindered in the suit by that knowledge from pleading the fictitious character of the deed. GARBHU BHAGAT v. RANGLAL SING, **7 B.L.R. Ap. 33.**

(25)—*Sale—Counter agreement for redemption —Mortgage—Condition against alienation.*—(By the Full Bench, *Stuart, C.J.* doubting).—Where simultaneously with a sale, the vendee executes an agreement that the vendor might redeem, within a certain time, on repayment of the purchase-money, provided such money was paid out of his own pocket and was not raised by a transfer of the property, the transaction, reading the two documents together, is one of mortgage, and not of sale; the vendor would have a right to redeem the property; and the condition

Vendor and Purchaser—continued.

——16.—**Miscellaneous**—*continued.*

against alienation is inequitable and incapable of enforcement either against the vendor or his representatives in title. *Per Pearson, J.*—The vendor did not bind himself, after the conversion of the sale into a redeemable mortgage, not to alienate the property, and a transfer is not positively, but only implicitly prohibited, by the terms used in the instrument executed by the vendee. What the vendee says is, that he will not recognise the transferee as having acquired, by the purchase, the equity of redemption, or cancel his own sale-deed. Such a declaration appears to be beyond his legal competence and to be of no effect. RAM SARAN LAL v. AMIRTA KUAR, **3 A. 369, F.B.** (N.W.P. 1866—1867, p. 7, F.B., *F.*) [*R.*, 131 P. R. 1894; *D.*, 5 A. 324, F.B., 2 Bom. L.R. 1058.]

(26)—*Land sold with a condition of re-purchase—No time restriction—Rights of transferee of original vendor's rights.*—Where land is sold on a condition of re-purchase and no time is mentioned in the instrument of sale, the sale does not become absolute; and any person who subsequently buys the original vendor's rights, is entitled to maintain a suit for recovery of the land. GURUSAMY AIYAN v. SWAMINADHA AIYAN, **2 M.H.C. 450.**

(27)—*Purchaser under conditional sale—Prior incumbrances.*—A purchaser under a conditional sale takes the property with all *bona fide* incumbrances created by his vendor previous to the sale. RADHA MOHUN DEB v. NUND LAL DEY, **7 W.R.C.R. 363.**

(28)—*Deed of conditional sale—Beng. Reg. XV of 1793 — Beng. Reg. XVII of 1806—Usufruct.*—A deed of sale executed in 1201 (1794) was subject to the condition that if the vendors, "from the year 1202 to the year 1203, should repay the whole of the consideration-money, they should receive back the deed of sale, which shall then become null and void; and if within the said period, they fail to pay the said consideration-money, this conditional sale shall become absolute and be considered irrevocable." *Held* that Reg. XV of 1793 did not operate to prevent the assignment becoming absolute after the expiration of the time limited for repayment of the consideration, and that Reg. XVII of 1806 had not a retrospective effect, and therefore did not apply; and that, even if the entire amount of the purchase-money were satisfied out of the proceeds of estate before the time for the conditional sale becoming absolute, the vendees would acquire a perfect title. BULDEO SINGH v. DHUKRUN SINGH, **Marsh. 632.**

(29)— Bona fide *purchase from guardian of Hindu widow acting collusively.*—The plaintiff was entitled, in the right of her deceased husband, to the equity of redemption in a mortgaged estate. Her guardian, in collusion with the mortgagee, instituted a foreclosure suit, in which she was represented by the guardian, who submitted to a decree; and

***Vendor and Purchaser*—continued.**

——16.—Miscellaneous—*continued.*

under that decree the property was sold, and the defendant became the purchaser. *Held*, that, the defendant being a *bona fide* purchaser, the sale was not liable to be set aside. KHETERMONEE DASSEE v. KISHENMOHAN MITTER, **Marsh 313=2 Hay 196.**

(30)—*Vendor and purchaser—Adverse possession.*—Where a person purchased lands previously mortgaged to another including gardens not included in the mortgage but allowed the vendor to remain in possession of the gardens. *Held*, that his claim for possession beyond 12 years from the date of sale was barred by limitation. UNGNEE LALL v. HOOLASEE, **1 Agra 110.**

(31)—*Sale-deed—Agreement by vendees—Pre-emptor refusing to accept obligations of—Party to agreement.*—A vendor when he sold his property obtained from the vendees a deed of agreement in his favour which together with the sale-deed were duly registered. The defendant (who as co-sharer got the sale deed cancelled by right of pre-emption) was put in possession of the property. He refused to accept the obligation of the agreement by the vendees in favour of the vendor. The vendor sued the pre-emptor to enforce the agreement. *Held*, that the right of pre-emption is merely a perterential right entitling a co-sharer to come in before a stranger to purchase, but clearly entitling him only to purchase on the same conditions as were *bona fide* offered by the stranger and accepted by the vendor under the original contract between them; the fact that he was not personally a party to the agreement which the vendor seeks to enforce is immaterial, that the agreement, always provided that it was *bona fide* and real, is a part of the consideration of the sale, the obligations of which the defendant is clearly bound to accept and from which, unless he can show that it is vitiated by fraud or collusion, he cannot be exonerated. KHAIT SINGH v. HEERA DASS, **1 Agra 78.**

(32)—*Sale of immoveable property — Effect on sale of subsequent agreement to reconvey—Pre-emption.*—An absolute transfer by sale of a share in a village vests the property completely in the vendee, inclusive of all the rights appurtenant and incident to the ownership of a share; and the rights of the vendee are in no way affected by the option given by the vendor to the vendee to re-purchase the property in a given time, until such option is actually exercised. Therefore, so long as the option is not exercised by the vendor the vendee can assert and enforce a right of pre-emption attaching to his ownership of the share purchased by him. BHAJAN v. MUSHTAK AHMAD, **5 A. 324, F.B.=A.W.N. 1883, 51.** (3 A. 369, *D.*) [*D.*, 14 A. 195, 3 O.C. 260.]

(33)—*Sale by one of several co-sharers—Sowing of crops by purchaser — Suit for pre-emption—Rival claims of purchaser and pre-emptor to crops.*—When a transferee of immoveable property believing in good faith that he is

***Vendor and Purchaser*—continued.**

——16.—Miscellaneous—*continued.*

absolutely entitled thereto, has planted or sown crops on the property, and is subsequently evicted therefrom, by a person having a better title, he is entitled to such crops if they are growing on the property at the time of his eviction; and where he has received possession of the produce of the crops before his eviction, and *a fortiori*, according to the principle above stated, he will be entitled to retain it. In this case, the Chief Court followed the rule contained in s. 51 of the Transfer of Property Act (IV of 1882), though the Act was not in force in the Punjab, as they thought that the rule was equitable and was in accordance with practice which, in the absence of express agreement to the contrary, usually obtained in the province, when the right to possession of cultivated land was transferred from one person to another. BAKIR ALI v. BELI RAM, **36 P. R. 1883.**

(34)—*Limitation—Pre-emption — Sale and subsequent agreement for re-purchase.*—A sold a certain share in a zemindari to B. C, a co-sharer, thereupon brought a suit for pre-emption of that share. During the pendency of the suit, A, B and C entered into a registered agreement that, on payment to B of the price paid by him at a fixed time in any year by either A or C, he should reconvey the share. Sometime after, A purporting to treat the transaction as a mortgage by conditional sale, applied under s. 83 of the Transfer of Property Act, paying the price into Court for a re-conveyance of the property to him. On B's refusing to take the amount, A applied for re-payment to him of the said money, stating that B may be in possession and that the said agreement may be treated as void. Sometime afterwards D filed a suit for pre-emption of the same property. The question was whether the limitation for this later pre-emptive suit was to be calculated from the date of the sale or from the date of the last application of A to treat the agreement as void. *Held* that the original sale was absolute, and it was not and could not be converted into a mortgage by conditional sale by the subsequent agreement, and that therefore limitation was to be calculated from the date of the original sale. RAM DIN v. RANG LAL SINGH, **17 A. 451=A.W.N. 1895, 103.** [*R.*, 3 O.C. 260, 8 O.C. 275.]

(35)—*Pre-emption—Failure to pay purchase-money on date fixed by decree, effect of—Punjab Laws Act* (IV *of* 1872), s. 18.—The plaintiff in this case, on the 24th June, 1889, obtained a decree for pre-emption on the condition that within a fixed day he should pay the purchase money into Court for payment to the vendee, and that, in default, his suit was to stand dismissed. On appeal by the plaintiff, a preliminary objection was taken as to the non-payment of the sum into Court as directed by the decree. It was contended that the suit stood dismissed with costs under s. 214 of the

Vendor and Purchaser—continued.

——**16.—Miscellaneous**—*continued.*

Civ. Pro. Code, that the decree had become void by reason of s. 18 of the Punjab Laws Act and that the decree-holder had lost his right of pre-emption so far as related to the sale in dispute. *Held*, that, although it was held in **70 P.R. 1890** that non-compliance with the direction in the decree of the Divisional Judge was not fatal to the further prosecution of the appeal, and that ss. 17 and 18 of the Punjab Laws Act, 1872, did not extend to a Court of appeal as regards suits for pre-emption on a sale, they applied to a Court of first instance, so that, under s. 17, plaintiff's decree in the present suit had become void. UMRAO SINGH v. MUHAMMAD KARIM BAKSH, **161 P.R. 1890.**

(36)—*Vendor and vendee, covenant between—Vendor not paying arrears of rent as per covenant—Loss to vendee—Damages.*—Where the vendor of certain jotes enters into a stipulation with the vendee at the time of sale that the arrears due to the landlord up to the time of sale are to be paid up by the vendor, and that if, on his failure to do so, the vendee should have to make the payment, he would be entitled to recover the amount as loss sustained by him, and subsequent to the purchase, the landlord brings suits for rent due for the period anterior to the purchase and also for a period subsequent thereto, and in execution of decrees obtained in these suits, certain properties comprised in the sale-deed are sold, the purchaser is entitled, if not under the strict words, at all events under the spirit of the terms of the kobala, to recover from the vendor the sum due as arrears from him to pay off which the property has been sold, as the sale was due mainly, if not entirely, to the failure of the vendor to comply with the stipulation in the kobala. SYED KUTAB ALI SHAH FAKIR v. AZIBULLA MONDUL, **7 C.W.N. 903.**

(37)—*Absence of title in vendor—Decision in previous litigation against third parties, effect of, as res judicata between vendor and vendee.*—When in a previous suit for possession instituted by the vendor and vendee jointly against third parties in possession, it was found that the vendor had no title, such decision as to his want of title would be *res judicata* in a subsequent suit by the vendee for recovery of the purchase-money paid up and for damages. KRISHNAN NAMBIAR v. KANNAN, **21 M. 8.**

(38)—*Vendor and purchaser—Portion of purchase money left with vendee as security—Failure by vendor to clear encumbrance on property—Vendee's liability to pay amount Liability to pay interest—Money retained not as deposit.*—Where a portion of the purchase money was left with the vendee as a security that the property sold should be freed from the encumbrances upon it and that he should have a good title, he is entitled to retain it, until the vendor provided the rest of the money necessary for

Vendor and Purchaser—concluded.

——**16.—Miscellaneous**—*continued.*

the purpose. Where the vendee retains the money not as a deposit but only as a security, he is not liable to pay interest, unless he refused or omitted to pay the money when he was informed by the vendor that he was prepared to pay the balance necessary to satisfy the encumbrances. MUHAMMAD SIDDIQ KHAN v. MUHAMMUD NASIR-ULLAH KHAN, **3 C.W.N. 201 P. C.=26 I. A. 45=21 A. 223=7 Sar. 472** [*R.*, 6 Bom. L. R. 505 P. C.]

(39)—*Sale of zamindari share—Tanks—Joint property—Wajib-ul-arz.*—The plaintiffs and the second set of defendants were the proprietors of a one-anna four-pies share in a five-annas four pies *thoke* in a certain village. In this *thoke* there were two tanks which had been excavated by F, the common ancestor of the plaintiffs and the second set of defendants. The latter who held a seven-pies share in the *thoke* conveyed four pies of this share to the first set of defendants with all the zamindari rights and interests appertaining to the same. The purchasers having used the tanks for irrigating their fields, the plaintiffs brought the present suit against them and their vendors to restrain them from using the tanks for that purpose. They alleged that the tanks were the exclusive property of the family of F; that this had been declared in the *Wajib-ul-arz*, and that, as the tanks were the undivided property of the family, an alienation of his interest therein by one member, without the consent of the other members, was invalid. The question therefore was, whether the rights held by the vendors in the two tanks were distinct from and independent of their zamindari rights, or of such a nature as would render them inalienable. It was found that the tanks were dug by F, the common ancestor referred to above, but the land was the common property of the village, and all that the *wajib-ul-arz* provided was that the co-sharer who excavated the tanks should have the right of irrigation therefrom, and that the other co-sharers should not be at liberty to irrigate their lands from such tanks without his permission. It was found also that, at the time of the sale to the first set of defendants, the second set of defendants did not form members of one and the same joint family with the plaintiffs, but that they held their seven-pies share separately. *Held* that the condition in the *wajib-ul-arz* fell far short of showing, either that the tanks were to be the exclusive property of the co-sharer who dug them, or that they should form a kind of property wholly irrespective and independent of the zamindari rights of such co-sharer; and that, although the share in the tanks of the second set of defendants may not have been specified by metes and bounds, still this circumstance alone was not sufficient to subject them to the rules which govern the shares of the members of a joint Hindu family as to alienation. Plaintiff's suit was accordingly dismissed. BINDESHRI PRASAD v. BHAWANI DIN, **A.W.N. 1884, 211.**

Vendor's Lien.

Sale—Purchase money partly paid—Right of vendor's decree-holder to bring the property to sale in execution as his judgment-debtor's property—*See* SALE—GENERAL, 6 A.L.J. 645 =31 A. 443.

Vendor's lien in England differs from the charge under the Transfer of Property Act, 1882 — *See* TRANSFER OF PROPERTY ACT, 1882, s. 55, 5 Bom. L.R. 838.

Veppu Tenure.

See MALABAR LAW — MORTGAGE, 7 M. 309.

Verbal Abuse.

Defamation — Personal insult— Cause of action— Verbal abuse — Special damage — Witness — Privilege — *See* WITNESS —PRIVILEGES OF WITNESSES, 10 A. 425=A.W.N. 1888, 157.

Verbal Admission.

Of sum due on account — Proof — *See* ACCOUNTS—MISCELLANEOUS. 13 C.L.R. 266 P.C=10 I.A. 74.

Verbal Application.

Verbal application for sale of attached property—Limitation—Step-in-aid of execution—*See* LIMITATION ACT, 1908, ART. 182—STEP-IN-AID OF EXECUTION, 15 B. 405.

Verdict.

(1)—*Verdict—Practice of Privy Council.*—Upon the reversal of the judgment of the Supreme Court at *Calcutta* finding for the plaintiff, the Privy Council, in the circumstances of the constitution of the Supreme Court, directed a verdict to be entered for the defendants, instead of awarding *venire de novo*. THE BANK OF BENGAL v. MACLEOD, **5 M.I.A. 1= 7 Moo. P.C. 35=13 Jur. 945=Taylor 434 (b) =1 Sar. P C J. 391.**

(2)—*Matter that may not be the verdict to be given in the case—Practice.*—At a trial, certain documents contained in the schedule to the answer of the defendants to a Bill of discovery, filed in equity, were read as evidence for the plaintiff, but the Court refused to allow the defendants to read the answer to which the schedule was annexed. *Held*, that, as the Supreme Court at *Calcutta*, being jurymen as well as judges, had refused to allow the answer to be read on the ground that such answer contained nothing material to the issue which would influence their verdict, a new trial on the ground of such refusal would not be granted. THE EAST INDIA COMPANY v. ODITCHURN PAUL, **5 M.I.A 43=7 Moo. P.C. 85=14 Jur. 253=1 Sar. P.C.J. 394.**

Verification.

See PLAINT.

See WRITTEN STATEMENT.

Verification—*concluded.*

(1) *Paper of exceptions to plaintiff's statements—Verification* —A mere paper of exceptions to the plaintiff's statement does not absolutely require any verification. Even if it does, the defendant should be so informed at the time of filing, and should be allowed time to verify the same if necessary. RAJAH PUNCHANON DOSS v. UNNOPOORNO DAYE, **1 W. R. Mis. 6.**

By Administrator—General—*See* ACT II OF 1874, s. 12, 26 C. 404=3 C.W.N. 298.

Principal officer of a corporation enabled to verify plaint, or written statement—*See* CIV. PRO. CODE, 1908, O. VI, rr. 14, 15, O. XXIX, r. 1, 22 C. 268.

Of petition by general attorney of petitioner, whether proper—*See* CIV. PRO. CODE, 1908, O. XXI r. 11 (2), 26 A. 154=A.W.N. 1903, 209.

On behalf of corporation—*See* CIV. PRO. CODE, 1908, O. XXIX, r. 1, 5 C.W.N. 91.

See CUSTOM, 2 Agra 217.

Requirements of the Civ. Pro. Code in respect of—*See* PLAINT — AMENDMENT OF PLAINT, 9 A. 188=A.W.N. 1887, 17.

Vernacular Date.

English and Vernacular date given in document—Mistake — Effect.— Where a patwari's report as to the date of a person's death gave the English and Vernacular dates and the dates should not correspond to each other, *held* that the Vernacular date should be taken as the true one and the English date as a miscalculation. JAGATPAL SINGH v. JAGESHAR BAKSH SINGH, **25 A. 143 P.C.=30 I.A. 27= 7 C.W.N. 209=8 Sar 367.**

Vested Interests.

See SUCCESSION ACT, 1865, ss. 98, 101, 102, 4 C. 304.

Vested Remainder.

Vested remainder—See MAHOMEDAN LAW (GENERAL), 9 Bom. L.R. 295.

Vesting and Divesting of Estate.

Hindu Law — Inheritance — Exclusion — Blindness—Partition.—By Hindu law, if a man dies leaving sons, one of whom has been blind from infancy, the latter does not inherit. The inheritance vests in the other sons as the heirs of their father, and it will not be divested in favour of a subsequently born son of the blind man, though such son would have inherited as an heir if he had been born before the death of his grandfather. The estate of a male heir once vested in him, by descent cannot be divested in favour of a relative who was not in existence when the ancestor died. Where a father separates from his sons, an after-born son alone inherits the share which his father took on partition as well as any wealth acquired by the father himself; and even as regards

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Vesting and Divesting of Estate—*concluded.*

the share taken by the father on partition, neither the after-born son, nor a son who was born blind and whose disqualification has been removed subsequent to the partition takes anything if the father should alienate his own share during his life time. KALIDAS DAS v. KRISHAN CHANDRA DAS, **2 B.L R. F.B. 103=11 W.R O.C. 11.** (6 Sel. S.D.R. 224, 10 M.I.A. 311, 1 B.L.R.A.C. 117, *R*) [*F.*, 6 B. 616; *Appl.*, 32 B. 455=10 Bom. L.R 559; *R.*, 12 B. 105, 5 A. 509 (F.B.)=3 A.W.N. 105, 18 C. 69, 18 C. 385, 1 C.W.N. 121, 23 B. 636. 4 C.L.J. 323; *Cons.*, 2 C. 295; *D.*, 9 M.64 (F.B.), 11 B. 609.]

Vesting of Estate.

Estate subject to partial trusts—Not postponed—*See* TRUST, 8 C. 378=10 C.L.R. 207.

Vesting of bequest, words necessary for—*See* WILL—CONSTRUCTION, 28 C. 621, P.C.=28 I.A. 159=5 C.W.N. 729.

Provision for maintenance of Testator's children—Specification of period of distribution—Vesting of share of dividends in each legatee—Estate once vested express words necessary to divesting of—*See* WILL—CONSTRUCTION, 12 B. 137.

Vesting Order.

See SALE — SALE IN EXECUTION OF DECREE—WRONGFUL AND INVALID SALES, 11 C.L.R. 389, 12 C.L.R. 60.

Vice-Chairman of Municipality.

(1)—*Powers of—Under Bengal Municipal Act, to issue notice to owners of dangerous buildings to remove or repair those buildings—Presumption under s. 114, Evidence Act—Of delegation by Chairman of power to issue notice—No proof of delegation—Conviction and sentence on prosecution for non-compliance with notice, sustainability of.*—The Vice-Chairman of a Municipality has no power to issue notice to the owners of dangerous buildings to remove or repair those buildings. He can issue notice if the Chairman had delegated such power to him according to the provisions of the Bengal Municipal Act. Where an objection is raised that the Vice-Chairman had no power to issue such notice, it is for those who allege that he had such powers to prove the allegation. A mere presumption under s. 114 of the Evidence Act that official acts would have been rightly done, could not dispose of the objection. Where there is no evidence to show that the Vice-Chairman was empowered to issue such notice, a conviction and sentence based upon such notice ought to be set aside. HARENDRA NATH MUKERJI v. THE CHAIRMAN OF THE BIRNAGER MUNICIPALITY, **1 C.L.J. 51.** (2 C.W.N. CLXXXVII, *Rel. on.*)

Vicinage.

Right of—Pre-emption—*Mohalla Mohiliyan*—*See* PRE-EMPTION, RIGHT TO PRE-EMPT, 6 P.R. 1905=19 P.L.R. 1905.

Village.

(1)—*When becomes a town—Mouza Rori.*—A village, *e.g.*, Rori, which is not a Municipality, but only comprises about 500 houses, with 11,500 acres of agricultural land, for a population of about 3,300 is not a town, though 40 or 50 of the houses in the village are *pakka* and 10 or 12 of the inhabitants pay income-tax. RADHA v. ANOKH SINGH, **26 P R. 1910=32 P.W.R. 1910=5 Ind. Cas. 909=152 P.L.R. 1910.**

Perfect partition, effect of, on covenants contained in *wajib ul-arz*—*See* PRE-EMPTION—CONSTRUCTION OF WAJIB-UL-ARZ, 7 A. 772=A.W.N. 1885, 263.

Meaning of the word—In the Punjab Laws Act—*See* PRE-EMPTION, RIGHT TO PRE-EMPT 23 P.R. 1906=107 P.L.R. 1906.

Village Abadi.

Land of a—Abadi—*Dedication by tenant of land to permanent and religious purposes—Right of tenant so to dedicate.*—The provisions of the *wajib-ul-arz* of a village showed with sufficient clearness that the land of a village site in the village fell within the ordinary provisions relative to the *abadi* which was held by tenants for dwelling houses and for the ordinary appendages for a dwelling house. *Held*, a tenant had no right to dedicate for ever to religious purposes, such as a *mosque*, to the detriment of the landlord, a portion of the *abadi* he was allowed to occupy as a residential house. BASA MAL v. GHYAS-UD-DIN, **2 A.L.J. 27=27 A. 356=A.W.N. 1904, 276.**

Village Administration Papers.

Proof of special custom—Village administration-papers, admissibility of—*See* EVIDENCE ACT, 1872, ss. 35, 48, 5 C. 744, P.C.=6 C.L.R. 593=7 I.A. 63.

Village and Towns Lands, Lower Burma.

See BUR. ACT IV OF 1898.

Village Brahmins.

Agreement among village Brahmins re. collection of offerings — Validity—*See* RIGHT OF SUIT — OFFICE OR EMOLUMENT, SUITS RELATING TO, 20 A. 234=A.W.N. 1898, 23.

Village-Chaukidari.

See BEN. ACT VI OF 1870.

Village Community.

(1)—*Village community—Capacity to hold property.*—A fluctuating body of persons, *e.g.*, a village community, is capable of property in this country. NAVROJI v. KHARSEDJI, **5 Bom. L.R. 745=28 B. 20.**

(2)—*Legal personæ—Property.*—The law of the country recognizes fluctuating communities (*e.g.*, the caste, village) as legal personæ capable of owning property. SECRETARY OF STATE v. HAIBATRAO, **6 Bom. L.R. 43=28 B. 276.**

Village Community—*concluded.*

Land in possession of—Delivery to defendant by Government and assignment as *natham*—Right of the—*See* POSSESSION—SUITS FOR POSSESSION, 6 Ind. Cas. 419=8 M.L.T. 248.

Meaning of—Inhabited sites not necessary for existence of village community—*See* PRE-EMPTION—RIGHT TO PRE-EMPT, 12 O.C. 1=1 Ind. Cas. 7.

Village Courts.

Madras—Application of the Succession Certificate Act VII of 1889 to suits in Courts under—*See* MAD. ACT I OF 1889, 21 M. 115.

See JURISDICTION OF VILLAGE MUNSIF, 20 M. 21.

Village Courts, Madras.

See MAD. ACT I OF 1889.

Village Fees, Cess in lieu of.

See MAD. ACT IV OF 1864.

Village Joshi.

Hereditary right of, to officiate at marriages in yajman's house—Invasion of right of joshi, liability of yajman for—*See* RIGHT OF SUIT—OFFICE OR EMOLUMENT, SUITS RELATING TO, 14 B. 167.

Village, Lower Burma.

See BUR. ACT III OF 1889.

Village Magistrate.

Whether a Magistrate—*See* SANCTION TO PROSECUTE, 27 M. 223=14 M.L.J. 24.

Village Munsif.

See BOM. ACT XVII OF 1879, 5 B. 180.

Execution of decree by village Munsif—Payment by defendant under protest—Power of District Munsif to direct refund by Village munsif of money, levied—*See* MAD. ACT I OF 1889, s. 73, 24 M. 335=11 M.L.J. 189.

When Civil Court can execute decree of—*See* JURISDICTION OF CIVIL COURTS, 4 M.H.C. 188.

See LIMITATION ACT, 1908, s. 29 (1) (*b*), 9 M. 118.

Village Munsif—Power to transfer suits—*See* MAD. REG. IV OF 1816, 8 M. 500.

Suits for sums not exceeding Rs. 10, cognizable by Court of—Concurrent jurisdiction of Small Cause Court—*See* MAD. REG. IV OF 1816, s. 5, 5 M.H.C. 45.

Decree of Village munsif—Sale of immoveable property in execution—*See* MAD. REG. IV OF 1816, s. 30, 7 M. 220

Village Munsif's Court subordinate to District Judge—*See* SANCTION TO PROSECUTE, 6 A. L.J. 796=6 M.L.T. 98=10 Cr. L. J. 437=3 Ind. Cas. 966.

Village Office.

Village offices—Carpenter—*See* MAD. ACT III OF 1895, s. 3, cls. 3 and 4, 7 M.L.T. 198=5 Ind. Cas. 477=33 M. 488.

Emoluments of—Liability to sale in execution—*See* MAD. ACT III OF 1895, s. 5, 28 M. 84=14 M.L.J. 468.

Jurisdiction—Civil Court—Karnam, office of—Suit for recovery of—*See* JURISDICTION OF CIVIL COURTS, 20 M.L.J. 281=7 M.L.T. 404=5 Ind. Cas. 1004.

Hereditary village office—Emoluments of office—Enfranchisement — Suit by dismissed holder—*See* RIGHT OF SUIT—OFFICE OR EMOLUMENT, SUITS RELATING TO, 7 M. 206.

Village Officer.

Attachment for non-payment of kist—Payment of kist subsequently — Detention of property attached in consequence of orders of superior officer—Liability of—For damages—*See* MAD. ACT II of 1864, s. 60, 26 M. 263.

Impressment of bullocks by—For use by Government Abkari Inspector—Suit for damages by owner of bullocks—*See* JURISDICTION OF SUBORDINATE JUDGE, 21 B. 773.

Village Police Act, Bombay.

See BOM. ACT VIII OF 1867.

Village Property.

Joint Village property—Profit and loss.—Profit and loss from joint village property must depend upon the holdings and not the number of the proprietors. SAWUN v. SUDDUN, 68 P.R. 1866.

Village Site.

Right of Revenue authorities to grant portions of—*See* GRAMA NATHAM, 4 M.L.T. 440.

Violence.

See MAHOMEDAN LAW—HUSBAND AND WIFE, A.W.N. 1886, 218.

Vis Major.

(1)—*Vis Major—Act of God—What is*—To be regarded, in law, as the act of God, the occurrence must be overwhelming and not only unforeseen but incapable of being foreseen and absolutely incapable of being prevented or guarded against. VITHALDAS v. MUNICIPAL COMMISSIONER OF BOMBAY, 4 Bom. L.R. 914.

(2)—*Vis Major, effect of.*—Where possession of land comes to an end by *Vis major* (*e.g.*, submergence of the land) the constructive possession of the lands rests not with the trespasser but with the true owner. Dispossession by *vis major* has the same effect as voluntary abandonment. SECRETARY OF STATE v. KRISHNAMONI, 4 Bom. L.R. 537.

(3)—*Vis Major when proper defence—Proximate cause—Negligence.*—*Vis Major*, to afford

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a defence, must be the proximate cause, the *causa causans*, and not merely a *causa sine qua non* of the damage complained of. Neglect to provide for conditions not exceptional may involve liability although *vis major* or exceptional conditions be also established. Where the damage caused was due to the insufficiency of precautions taken by the defendant, in constructing bridges and embankments in a creek for carrying a duct line, to cope with conditions, which might reasonably have been anticipated, the defendant is liable. The mere fact that *vis major* co-existed or rather followed on the negligence is no adequate defence. Before an act of God may be admitted as an excuse the defendant must himself have done all that he was bound to do. MUNICIPAL CORPORATION OF BOMBAY v. VASUDEO, **6 Bom. L.R. 899.**

See ABATEMENT OF RENT, 10 C. 544.

Prescriptive right to maintain bund—Vis Major—*See* EMBANKMENT, 3 C. 776.

Destruction of mortgaged property by—Stipulation in mortgage deed for payment to mortgagee of cost of restoring—*See* MORTGAGE—CONSTRUCTION OF MORTGAGE DEEDS, 14 B. 28.

See POSSESSION—NATURE OF POSSESSION, 29 C. 518, P.C.=29 I.A. 104=6 C. W. N. 617=4 Bom. L R. 537.

Vizagapatam and Ganjam.

See MAD. ACT XXIV OF 1839.

Vizagapatam Agency Rules.

Rule XXXI—*Applicability to matters in execution of decrees.*—Rule XXXI of the Vizagapatam Agency Rules provides for cases for which no previous provision has been made (such as petitions relating to matters in execution of decrees, in respect of which no appeal has been allowed). MAHARAJA OF JEYPORE v. SRI NILADEVI PATTAMAHADEVI, **27 M. 109**

Void Transaction.

Void transaction - Ratification.—A void transaction cannot be ratified. RANGANAIKULU v. SATTAMMA, **9 M.L.J. 104.**

Voluntary Conveyance.

See TRANSFER OF PROPERTY ACT, 1882, s. 53.

(1)—*Voluntary settlement—Subsequent conveyance for value—Intention to avoid voluntary settlement—St. 27, Eliz. C. 4.*—Where a person who has made a voluntary gift or settlement, sells the property to another for value, the conveyance operates as a conveyance of the estate which the settler had before the voluntary settlement ; St. 27, Eliz. C. 4, puts the settlement out of the way, so that it shall not affect the conveyance which is made to the purchaser. Words showing an intention on the part of the person, who made the voluntary gift to convey to the purchaser all

Voluntary Conveyance—*concluded.*

the interest on estate that he had, are sufficient to avoid it R S.E. JUDAH v. MIRZA ABDOOL KURREEM, **22 W. R. 60.** [*R.*, 22 C. 185, 25 B. 202.]

(2)—*Parties in possession under will—Obligations of donee or legatee.*—Parties in possession under a will, *i.e.*, a voluntary transfer, are not thereby bound to pay the debts of the former holder. RAM OOTTUM CHOWDHRY v. OOMESH CHUNDER CHATTERJEE, **21 W.R. 155.**

(3)—*Proof of fraudulent intention to delay creditors not necessary to avoid.*—To avoid a voluntary settlement as fraudulent against creditors it is not necessary to prove an actual intention to delay creditors present to the mind of the settler at the time, it is sufficient if the settler could not have paid at the time all his debts from his remaining assets. SETH MOHANLAL v. BALMAKUND, **17 C.P.L.R. 24.** (13 B. 297, *R*).

By debtor—Good faith—Fraud against creditor—*See* CONTRACT ACT, 1872, s. 25, 2 A. 891.

See DEPOSIT OF TITLE DEEDS, 6 B.L.R. 701.

See LIS PENDENS, 31 P.R. 1874, 86 P.R. 1879.

See MISJOINDER OF CAUSE OF ACTION, 4 Bom. L.R. 180=26 B. 577.

Voluntary Payment.

See CONTRACT ACT, 1872, ss. 69, 70, 72.

See CONTRIBUTION SUIT FOR—VOLUNTARY PAYMENT.

(1)—*Voluntary payment—Re-imbursement.*—Where the payment made by a person on behalf of another is a voluntary and gratuitous payment, re-imbursement of such payment cannot be enforced at law. SUMER SINGH v. SHIB LAL, **A.W.N. 1882, 149.**

(2)—*Voluntary payment on behalf of another—Re-imbursement.*—Where the plaintiff ceased to be the owner of an estate which had passed into the hands of the defendant and, on the latter's failure to pay the Government revenue on it, the revenue authorities enforced payment from the plaintiff, as mutation of names had not been effected, *held* that the plaintiff could not recover the amount from the defendant, as the payment was not made at the defendant's request, express or implied, and as the plaintiff was not bound in law to make the payment of the revenue due on the defendant's estate. CHUNIA v. KUNDAN LAL, **A.W.N. 1882, 150.**

(3)—*Payment of assessment by Talukdar under protest—Right of Talukdar to sue.*—Plaintiff, the Thakor of Limbdi, held several villages in the Ahmedabad District. Litigation carried on between the Thakor and the *grassias* of one of the villages resulted in a compromise, and, carrying out the decree passed in pursuance of the compromise, a moiety of the village was

Voluntary Payment—*continued.*

handed over to the *grassias*. On the Government demanding *jamabandi* for that moiety, the Thakor objected, on the ground that he was paying a lump *jama* for the whole of his Taluka, including the above half of the village assigned to the *grassias*. The Government however, passed a resolution that that half belonged to the *grassias* but that they were willing to take the *jama* imposed on that moiety from the hands of the Thakor. He therefore paid the same for two years under protest, and then brought this suit to recover the same and for a declaration that the village was included in his Taluka and so not liable to any separate *jamabandi* assessment. The lower Court dismissed the suit finding on a preliminary issue regarding the question of cause of action that plaintiff had no cause of action against Government in respect of the village and that plaintiff had voluntarily paid the *jama* and could not therefore sue to recover it. Upholding the objections taken on appeal, *viz.*, that the payment of the *jama* by the Thakor was not voluntary because he, as talukdar of the whole village, had an ultimate interest in the assessment of any part thereof and that therefore he had paid, under protest, the demand made by the Government on the *grassias* to prevent that moiety being put up for sale, the High Court reversed the decree of the lower Court, and, holding that the suit was maintainable, remanded the suit for trial on the merits. MAHARANA SHRI JASVATSINGJI FATESINGJI v. THE SECRETARY OF STATE FOR INDIA, **14 B. 299.**

(4)—*Ss.* 69 *and* 70, *Act* IX *of* 1872 (*Contract*) —*Payment voluntary and for benefit of another, for protecting property from execution-sale.*—Where certain property was liable to be sold in execution of the decree obtained against the defendants by a third person, and there was at that time a question as to whether the property really belonged to the plaintiff or to the defendants, the plaintiff who pays up the decree and saves the property from sale, is entitled to recover the amount from the defendant, either under s. 69 on the ground that he was interested in the payment, or under s. 70 on the ground that the payment relieved the defendants from their liability under the decree and that they enjoyed the benefit of the payment. BAMA SUNDARI DASI v. ADHAR CHUNDER SARKAR, **22 C.28**. (7 C. 648, P.C., 12 C. 213, 15 C. 656, *Relied on*). [*Appr.*, 28 A. 563=3 A.L.J. 372= A.W N. 1906, 114; *D.*, 7 O.C. 146.]

(5)—*S.* 69, *Contract Act*, 1872—*Interest at the time of payment sufficient.*—When there is a disputable question awaiting the determination of the Court, with reference to the rights of the mortgagee, then, so long as that question remains undetermined, it cannot be said that the mortgagee was not interested in the payment of the money, which was necessary to be paid to protect the interest, which he was claiming as mortgagee. (7 C. 573, *F.*) Such payment by the mortgagee, not being voluntary, he can recover that sum from his opponent, notwithstanding

Voluntary Payment—*continued.*

that it has since been found by the Court that the mortgage-debt had been satisfied before the date of the payment. BINDUBASHINI DASSI v. HARENDRA LAL ROY, **25 C. 305=2 C.W.N. 150.** (21 C. 142, P.C., *F.*) [*F*, 26 C. 826; *R.*, 11 O.C. 279; *D.*, O.C. 1467, 5 C.L.J, 59.]

(6)—*S.* 69, *I.C.A.*, 1872—*Voluntary payment —Interest at the time of payment sufficient*—**S.** 14, *Reg.* VIII *of* 1819 (*Putni*), *scope of.*—S. 69, I.C.A., does not require that the person, who made the payment, should have done anything actively to keep up the interest which he claims. All that is required is that the payment should be made by a person, who is interested in the payment. A payment of rent by the purchaser of a *putni* taluq, during the pendency of an appeal for setting aside the *putni* sale, is not a voluntary payment, as the purchaser is a person "interested" in the payment of the money under s. 69. (25 C. 305, *F.*) And the remedy, which he has under s. 69, is not in the event of the sale being set aside, curtailed by s. 14, Reg. VIII of 1819. RADHA MADHUB SAMONTA v. SASTI RAM SEN, **26 C. 826.** [*D.*, 7 O. C. 146, 11 O. C. 279.]

(7)—*Ss.* 69, 70, *Contract Act—Arrears of rent due on tenure at time of sale, paid by execution-purchaser—Liability of tenure-holder—Privity of contract—Charge.*—Rent is, by operation of law, the first charge on a tenure, and a person who purchases the same at an execution-sale must, in the absence of anything to denote the contrary, be taken to purchase it, charged with the rent which was due in respect of it at the time of its purchase, and there being no privity between him and the judgment-debtor, he cannot recover from the latter the money which he is obliged to pay for the rent so due at the time of the purchase. Hence, a plaintiff—the purchaser of the tenure mortgaged, in execution of a mortgaged decree—who pays the money due under a decree obtained by the landlord against the tenure-holder, for arrears of rent, for the period anterior to the confirmation of sale, is not entitled to recover the money paid by him for satisfying the rent-decree. SRIMATI MOHARANEE DASYA v. HARENDAR LAL ROY, **1 C. W. N. 458.** [*F.*, 6 C.W.N. 794, 32 C. 643=9 C.W.N. 670; *D.*, 11 O.C. 279.]

(8)—*Money paid not voluntarily but under compulsion of law — Suit to recover — Money decree.*—Where a mortgagee of two separate properties purchased the equity of redemption of one of them, whose value beyond the purchase money was found to have exceeded the amount due on the mortgage, and, on his obtaining a decree upon the other property and proceeding to sell it, the plaintiff, who represented a prior mortgagee of such property and had purchased it also, paid the decretal money into Court to prevent the sale, after a futile objection against the same, *held*, it was not a voluntary payment nor a payment of money equitably due, but one made under compulsion of law, *i. e.*, under pressure of execution proceedings, and that it could be recovered by a

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money-decree in a suit brought for the purpose, the remedy not being confined to the execution proceedings. DULICHAND v. RAM KISHEN SINGH, **7 C. 618 (P.C.) = 8 I.A. 93 = 4 Sar. 245.** [*F.*, 5 A. 400 = 3 A.W.N 79, 15 C. 656; *Appl.*, 22 C. 28, 12 C.W N. 151, 10 O.C. 280; *R.*, 22 B. 473, 4 O.C. 341; *D.*, 7 O.C. 146.]

(9)—*Voluntary payment—Assignee of portion of claim made co-defendant.*—A payment made by a judgment-debtor, not to the decree-holder but to a person who is said to have obtained an assignment of a portion of the plaintiff's claim and who is therefore made a *pro forma* party a (co-defendant) in the suit, and who has not asserted his rights in the suit and no decree is given in his favour, is a purely gratuitous act which cannot defeat the rights of the decree-holder. KANOONGOE BUKTESHUR v. RAJAH CHUNDER SEEKHUR, **W.R. 1864, Mis. 8.**

(10)—*Voluntary payment—Deposit in Court.*—Where money was deposited in Court by a judgment-debtor under protest for the purpose of preventing an injurious sale, and the depositor, declaring his intention to bring a regular suit to set aside the summary order rejecting his claim, prayed that the sum might be paid to the decree-holder, and the sale stayed, the payment was held not to be a voluntary payment. FATIMA KHATUN v. MAHOMMED JAN CHOWDHRY, **1 B L.R. P.C. 21 = 12 M.I.A. 65 = 10 W.R. P.C. 29.** [*R.*, 15 C 656, 14 B. 299, 5 Ind. Cas. 379, 14 C.W.N. 945 = 6 Ind. Cas. 810; *D.*, 10 W.R. 400, 11 W.R. 218, 3 A.L.J. 819 = A.W.N. 1908, 130.]

(11)—*Voluntary payment—Money paid for benefit of another—Interest at the time of payment sufficient—Position of party taking possession under order of Court.*—A party's taking possession of property under a decree or order of Court though such decree or order is afterwards set aside, is not wrongful seizure. The proposition, that a person who is in wrongful possession is not entitled to recover sums spent on account of outgoings, is not a proposition of law admitting of no exception. For, it seems to be common justice that, when a proprietor in good faith, pending litigation, makes the necessary payment for the preservation of the estate in dispute, and the estate is afterwards adjudged to his opponent, he should be recouped what he has so paid, by the person who ultimately benefits by the payment, if he has paid, through no fault of his, to reimburse himself out of the rents. He is bound to account for mesne profits for all rents and profits which he has received, or which without wilful default he might have received. But if owing to circumstances beyond his control, and still more if in consequence of some wrongful conduct on the part of his opponent, he has received less than what he has had to pay for the preservation of the estate, it would seem to be in accordance with justice, equity, and good conscience,—there being no specific rule to the contrary—that he should recover the difference on the final adjustment of accounts. The

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claim, here, is in the nature of salvage, and the law relating to sales for arrears of Government revenue recognises an equity to re-payment in the case of a person who, not being a proprietor pays the Government revenue in good faith to protect a claim which afterwards turns out to be unfounded. DAKHINA MOHUN ROY v. SARODAY MOHAN ROY, **21 C. 142 P.C. = 20 I. A. 160 = 6 Sar. 366.** [*F.*, 17 M. 251, 7 M.L. J. 211, 25 C. 305; *Appl.*, 26 C. 826; *R.*, 18 M. 359, 6 C.W.N. 88, 26 M. 686 (F.B.) = 13 M. L. J. 83, 60 C. 346, 26 A. 407 = A.W.N. (1904), 74; *R.* 30 M. 526 = 17 M.L J. 439 = 2 M. L.T. 468; 18 M.L.J. 306 = 3 M.L.T. 395 = 31 M. 439, 11 O.C. 279; *D.*, 7 O.C. 146, 5 C.L.J. 59, 81 P.W.R. 1908.]

Payment into inferior Court with knowledge of attachment by higher Court—*See* CIV. PRO. CODE, 1908, O. XXI, r. 46, s. 63, O. XXXVIII, r. 12, 17 M.L.J. 488.

What amounts to—Right of contribution—*See* CONTRIBUTION—SUIT FOR—GENERAL, 7 A. L. J. 409 = 6 Ind. Cas. 113 = 32 A. 479.

Husbands, debts paid by wife in his life-time—Payment is a—*See* HINDU LAW—DEBTS, 5 A. L. J. 339 = A. W. N. 1908, 143 = 30 A. 352.

Lease-deed—Entire extent not put in possession of lessee—Proportionate reduction of rent for lands not given — Payment of whole rent under protest, whether a voluntary payment—*See* LANDLORD AND TENANT—PAYMENT OF RENT BY TENANT, 7 M. L. T. 52 = 5 Ind. Cas. 712.

Contribution, Suit for—*See* LANDLORD AND TENANT—RELATIONSHIP OF LANDLORD AND TENANT, 4 B. 79.

See MONEY HAD AND RECEIVED, 3 N. W. P. 162, 5 N. W. P. 1.

See MONEY PAID, 10 W. R. 400, 7 N. W. P. 154.

Payment into Court to prevent arrest—Voluntary payment — *See* PAYMENT INTO COURT, 4 B. L. R. App. 25 = 13 W. R. 29.

Right to share in—Made to a religious association—Suit on the Small Cause side, maintainability of—*See* PROVINCIAL SMALL CAUSE COURTS ACT, 1887, sch. II, art. 13, 28 M. 202.

See VENDOR AND PURCHASER—PURCHASE MONEY AND OTHER PAYMENTS BY PURCHASER, 18 W. R. 503.

Voluntary Services.

Promise to compensate for voluntary services rendered—*See* CONTRACT ACT, 1872, ss. 2 (*d*) and 25, 20 B. 755.

Voluntary Settlement.

See VOLUNTARY CONVEYANCE.

Voluntary settlement deed—Suit to set aside deed—Burden of proof of settler's knowledge as to effect of settlement and its finality—*See* BURDEN OF PROOF—DECREES AND DEEDS, SUITS RELATING TO, 15 B. 549.

Voters.

When the original list of voters can be revised by the Chairman—*See* BEN. ACT II OF 1888, ss. 8, 19, 21, 22, 23 and 31, 22 C. 717.

Voting by Proxy.

See COMPANY—MEETINGS AND VOTINGS, 7 Bom. L.R. 99=29 B. 126.

'Vrit' or 'Vrith'—Inalienability—Impartibility — Custom—*See* HINDU LAW—PARTITION, 5 S.L.R. 107.

Vyavahar Mayukh.

Applicability of—To *Khoja* Mahomedans—*See* KHOJA MAHOMEDANS, 29 B. 85.

See CONTRACT—WAGERING CONTRACTS.

See CONTRACT ACT, 1872, s. 30.

See GAMBLING.

(1)—*Contract Act, s. 30—Wagering contracts—Losses incurred by employer—Payment by agent whether recoverable.*—Wagering contracts are under s. 30 of the Contract Act, void, but not illegal, and when an agent or broker has paid losses incurred by his employer in a badni or wagering transaction, such losses, together with his brokerage fees, can be recovered by suit, the contract with the broker, which is collateral to the wagering agreement, not being tainted with illegality by reason of its connection with the wagering transaction. TELU MAL v. SUBHA SINGH, **90 P.R. 1880.** [*Appr.*, 80 P.R. 1895; *Appl.*, 46 P.R. 1901=95 P.L.R. 1901.

Agreement to decide suit by lottery is wagering contract and void as opposed to public policy—*See* AWARD, 5 N.L.R. 107=3 Ind. Cas. 55.

Agreement to convey property after decree in lieu of expenses of litigation—Not a wagering transaction—*See* CHAMPERTY, 14 O.C. 139.

See HINDU LAW—ALIENATION, 6 B.L.R. 732.

Wagering Contract.

See CONTRACT—WAGERING CONTRACTS.

See CONTRACT ACT, 1872, s. 30.

See GAMBLING.

See WAGER.

See CONTRACT ACT, 1872, ss. 20, 65, 25 M. 561.

Mercantile usage—Opium—*See* INTEREST—CASES WHERE INTEREST WAS NOT SPECIFICALLY PROVIDED FOR, 9 M.I.A. 256.

Wagers Act.

See ACT XXI OF 1848.

See BOM. ACT III OF 1865.

Wages.

(1)—*Civ. Pro. Code, s. 503—Management by receiver—Claim for wages of servants.*—Whee the properties of a firm have been placed by the

Wages—*concluded.*

Court under the management of a receiver, a servant of such firm has no preferential right over the creditors of the firm, to his wages accrued due before the appointment of the receiver. SHORT v. PICKERING, **6 M. 138.**

Of private servant not attachable in advance—*See* ATTACHMENT—SUBJECTS OF ATTACHMENT, 21 M. 393.

Labourer—Attachment in execution—*See* ATTACHMENT—SUBJECTS OF ATTACHMENT, 5 B. 132.

Money payable to sirdars as—Of coolies—*See* ATTACHMENT—SUBJECTS OF ATTACHMENT, 1 B.L.R. S.N. 15=10 W.R. 149.

Right of servants to prove preferentially to other creditors—Wages of Captain and crew—*See* COMPANY—WINDING UP OF COMPANY, 2 Ind. Jur. N.S. 17.

Of labourers—*See* COMPANY—WINDING UP OF COMPANY, 2 Ind. Jur. N.S. 180.

Indian Companies Act, VI of 1882—Winding up of Company—No priority to unpaid wages of servants—*See* COMPANY — WINDING UP OF COMPANY, 10 B. 211.

See CONTRACT ACT, 1872, s. 74, 2 C.W.N. 687.

Suit for—Rate fixed by record of rights—Jurisdiction — *See* JURISDICTION OF REVENUE COURTS, 41 P.R. 1908=88 P.W.R. 1908=178 P.L.R. 1908.

Thayagam Service—Suit for recovery of wages—*See* LIMITATION ACT, 1908, Art. 7, 96.

Suits for—*See* LIMITATION ACT, 1908, art. 102, 1 Agra Mis. 8.

See PRINCIPAL AND AGENT — GENERAL, A.W.N. 1883, 218.

See SET-OFF, A.W.N. 1883, 5.

Waiver.

See INSTALMENT BOND.

See LIMITATION ACT, 1908, art. 75.

See PRE-EMPTION — LOSS OF RIGHT BY WAIVER, ETC.

(1)—*Jurisdiction—Waiver of jurisdiction—Consent of parties.*—An objection to jurisdiction cannot be waived by the parties. LALMONEY DOSSEE v. JADDOONAUTH SHAW, **1 Ind. Jur., N. S. 319.** *Contra. See* TICKUM LALL DOSS v. MACARTHUR, **1 W.R. 279.**

(2)—*Jurisdiction, Objection to.*—An objection as to jurisdiction cannot be waived. NARAIN PUTTER v. AYA PUTTER, **7 M. H. C. 372.**

(3)—"*Waiver*", *what is not.*—The obligee's allowing the default to pass unnoticed and sleeping over his rights would not constitute

Waiver—*continued.*

"waiver," and limitation would run from the date of such default. *In the matter of* CHENI BASH SHAHA v. KADUM MUNDUL. **5 C. 97.** [*F.*, 7 M. 583, 14 C. 397; *R.*, 15 C 502, 21 C. 542, 13 C.W.N. 1010; *Rel. on*, 36 C. 394=9 C. L.J. 226=13 C.W.N. 1004.]

(4)—*Waiver of rights—Circumstances under which waiver is permitted.*—It is not the law that man may waive any rights. The general rule is power of renunciation, but there are two marked classes of exceptions. There can be no renunciation of rights and consequent destruction of relative duties prescribed by an absolute law, nor can there be any renunciation of the rights inherent in man as man. A man may renounce a concrete right but not one resulting from a natural condition. CHERUKOMEN *alias* GOVINDEN NAIR v. V. ISMALA, **6 M. H. C. 145.** [*R.*, 6 M. H. C. 405, 28 M. 182, F.B.=14 M. L. J. 415; *D.*, 6 M. 71.]

(5)—*Waiver is a question of fact—Appeal to Privy Council—Ground not taken in the Appeal Court in India.*—A question of waiver was decided adversely to the appellant by the Court of first instance and was not submitted for review to the Appeal Court in India; *held*, that, the question being one of fact, the Judicial Committee had no power to entertain the appeal. DHANUKDHARI SINGH v. MAHABIR PERSHAD SINGH, **11 C.W.N. 739, P.C.=6 C.L.J. 11=9 Bom. L R. 651=2 M.L.T. 193=17 M.L.J. 353 =14 Bur. L.R. 1=34 C. 709=34 I.A. 164.**

(6)—*Acquiescence or waiver—Question of fact—Second appeal.—Per Rampini, J.*—The question of acquiescence or waiver is a question of fact and the finding of the lower appellate Court on such a question is final and cannot be interfered with in second appeal. *Per Mookerjee, J.*—Acquiescence is not a question of fact, but of legal inference from facts found, and it is open to the appellant in a second appeal to invite the High Court to consider whether the question of acquiescence has been properly decided by the lower Courts. ANANDA CHANDRA SEN v. PARBATI NATH SEN, **4 C. L.J. 198.** (21 A. 596, P.C., *F.*) [*R.*, 9 C.L.J. 623 =1 Ind. Cas. 530; *F.*, 11 C.L.J. 189.]

(7)—*Laches—Bar to suit—Acquiescence*—Laches means a neglect to do something which by law a man is obliged to do. To bar a remedy, it must amount either to waiver, abandonment or acquiescence. To raise the presumption of any of these, the evidence of conduct must be plain and unambiguous. PEER MAHOMED v. MAHOMED, **7 Bom. L.R. 200=29 B. 234.**

(8)—*Overdue instalments—Payment and acceptance of—When amounts to waiver—Successive default—Acceptance of first instalment after time—Conditional waiver—Repetition not allowed—No difference between contractual and decretal rights.*—Payment and acceptance of overdue instalments cannot by themselves prove waiver. (7 W.R. 21, 2 A. 857, 20 B. 109, 17 B. 555, 2 A. 443, 27 B. 1, 36 C. 840, 15 C.W.N.

Waiver—*continued.*

10, *R.*) Estoppel and waiver in such a matter are questions of conduct and must necessarily be determined on the particular circumstances of each case. If each of the parties has by his acts intentionally caused the other to believe that the payment was a regular satisfaction of the obligation, and the parties have acted on that belief, neither can afterwards deny the regularity. In a case where the exiguity of a debt depends on two consecutive defaults, a creditor might reasonably be willing to waive the first of them on condition that it was not repeated. A default, once condoned by a waiver, will not, in the absence of express agreement, be revived by the occurrence of any succeeding default. There could be a waiver of contractual as well as decretal rights. BALLABDHAS v. DALIP SINGH, **7 N.L.R. 147.** (1 B. 125, 2 B. 356, *R.*)

(9)—*Waiver, acceptance of overdue instalments.*—Though there may be a failure to pay punctually under an instalment decree, still the subsequent conduct of the parties may preclude either of them from afterwards asserting that the payment was not made regularly and in satisfaction of the obligation under the decree. The question whether payment and acceptance of overdue instalments cannot by themselves form waiver is one to be determined on the circumstances of each case. KASHIRAM v. PANDU, **4 Bom. L.R. 688=27 B. 1.**

(10)—*Bond payable by instalments—Provision to pay entire sum in case of default of any one instalment—Subsequent acceptance of instalments—No right to claim entire sum.*—Where a bond payable by instalments provided that on failure to pay any instalment the whole sum secured by the bond should be at once recoverable and the obligor failed to pay some of the instalments as they fall due but the obligee received payment thereafter instead of requiring payment of the entire sum secured by the bond, the subsequent acceptance of instalments constituted a waiver of the obligee's right to claim the entire sum. RAO BAHADUR MUKUND BALKRISHNA BOOTY v. DIWAKER TANKO. **4 C.P.L.R. 21.** (5 C. 97. 9 C. 857, 14 C. 354, 15 C. 504, *F.*; 2 A. 857, *Diss.*)

(11)—*Instalment bond—Payment after default—Intention of parties necessary factor in determining waiver.*—Where a bond payable by instalments provided that, on default in the payment of any one instalment, the whole sum in one lump was to be payable without the objection of the remaining instalments not falling due, the obligee cannot set up a payment after default as constituting a waiver, unless he is in a position to show that such payment was intended as a payment of a particular instalment and was accepted as such. PARASHARAM v. AHMEDALLI, **8 C.P.L.R. 95.** [*Diss.*, 12 C.P. L.R. 18.]

(12)—*Instalment bond—Acceptance of part of overdue instalment, whether—Waiver—Question of fact—Limitation Act* (IX *of* 1908), *sch.* I, *art.* 75.—It cannot be laid down as a general

Waiver—*continued.*

rule, that, where an instalment bond gives the creditor the right to sue for the whole amount on default of payment of a single instalment, there is no waiver of that right by acceptance of part of an overdue instalment or by receipt of interest. The ruling in 31 C. 83 is an *obiter dictum*. The question of waiver is a question of fact to be determined according to the circumstances of each particular case. OSMAN SHAHA v. MAHOMED AMAR SIRKAR, **9 Ind. Cas. 22.**

(13)—*Instalments — Default in payment.*—The plaintiff agreed, in 1901, to sell to the defendant his lands for Rs. 1,000, and put the latter in possession. The terms of the contract were, (1) that the purchase-money should be paid annually by instalments of Rs. 100 each on certain fixed dates; (2) that, in case of default in the payment of the first instalment on the due date, the plaintiff should be entitled to recover it as rent and sue for possession of the lands; (3) that, in case of default in the payment of any three or four subsequent instalments on the due dates, the plaintiff should be entitled to recover possession of the lands and claim the unpaid instalments as rent; and (4) that, on payment of all the instalments, the title to the land should be treated as having passed to the defendant by sale, but that in the meantime the plaintiff should continue owner thereof. The plaintiff sued for possession of the lands, alleging default in the payment of the instalments of 1904, 1905 and 1906. The lower Courts, finding that there had been waiver by the plaintiff as regards the first two instalments and probably as regards the third also, dismissed the suit. On appeal: *Held*, that, as to the first three instalments, the plaintiff dealt with the defendant in such a way as to show that he did not insist on payment on the dates fixed in the contract; and that, after that course of conduct, he was not warranted in enforcing payment according to the strict terms of the contract without previous intimation to the defendant to that effect. CHAGAN CHUNILAL v. SUKU BARKU. **13 Bom. L.R. 891.**

(14)—*Omission to claim interest—Pleading.*—Both parties stipulated for payment of rent on certain dates, and, if not so paid, of a certain rate of interest until paid. The rent not having been paid at the time agreed on: *Held* that the landlord's omission to claim interest, instalment by instalment, for the fractional time that the rent was not paid after it became due, did not justify the plea that the interest stipulated for was not due, or warrant the belief that the plaintiff had waived his claim to interest. RUTTY KANT BOSE v. GUNGADHUR BISWAS, **W.R. F.B. 13=1 Ind. Jur. O.S. 6 =Marsh 40.**

(15)—*Waiver of right to interest on arrears of rent—Receipt of arrears of rent for long time without interest.*—By the terms of a kabuliat, rent not paid when due was to bear interest. The zemindar received rent for a period of ten years without making any demand of interest in respect of arrears, and without claiming to apply any portion of the payments towards the discharge of interest. Having subsequently brought a suit for interest, the Courts below were of opinion that the zemindar had waived his claim to interest and dismissed his suit. *Held*, that there were facts justifying such an inference, and that their finding could not be reviewed in special appeal. DINDOYAL PORAMANICK v. PRAN KISHEN PAUL CHOWDHRY, **Marsh 394=W.R.F.B. 117=2 Hay 423.**

(16)—*Interest—Omission to claim interest on arrears of rent, in the past, whether waiver.*—The mere omission to claim interest for past years from a tenant at the stipulated rate, cannot amount to a waiver of the landlord's right to claim interest at that rate. SHYAMA CHARAN MANDAL v. HERAS MOLLAH, **26 C. 160.** (5 C. 102, *F.*)

(17)—*Renunciation, nature and effect of—Mutual mistake, relief against.*—There may be a valid renunciation of rights by general expressions, but it is natural and obvious that they cannot be held to embrace rights of which the existence was in fact unknown or of which it cannot be, with certainty, made out that the author of the expressions was thinking. It would be puerile to assume an intent to renounce rights of which the very existence was *ex concesso* unknown. The mere acting as if a rule of law existed which did not exist will not make that law which is not law. And a man is at liberty to insist upon his rights unless he has lost them by renunciation, compromise, or by force of a rule of law. A man may, no doubt, by an agreement operating as a compromise or mutual arrangement, preclude himself from afterwards setting up a right which at the time he did not consider that he possessed but only when it would be in some way against the true effect of the agreement to set up the right, in other words, when it appears to have been the object of the arrangement to preclude an after-claim of the kind. Where the case is one of an arrangement come to under a mutual mistake, against such an agreement as a bar to his after discovered claim a party is equitably entited to relief. SUBBIEN PILLAY v. ARNACHALA IRUNGOL PILLAY, **5 M.H.C. 444.** [*R.*, 14 M.L.J. 175, 14 M.L.J. 415, F.B., 28 M. 182.]

(18)—*Omission to raise defence in prior suit, bar to subsequent suit based on such point.*—One J sued her husband's brother's wife K, as owner by right of inheritance, to recover the property of her deceased husband, and in that suit K resisted J's claim on the ground of her preferable right to inherit. Having failed in that suit, K subsequently sued to recover half of the property on the basis of a family agreement made between her and J's deceased husband. This agreement was designedly suppressed at the period of the former suit. *Held* that the suit must be dismissed, that K now insisted upon a valid family compact varying the ordinary rules of inheritance, having previously

Waiver—*continued.*

appealed to those general rules litigated the matter through these Courts, designedly keeping back the compact upon which she now sought to insist, and that there could be no stronger case of an absolute waiver of that contract and of conduct rendering it wholly inequitable to permit her now to insist upon it (*b*). *Semble* :—Where a defendant has been sued by a plaintiff upon his right of ownership, the plaintiff's recovery negatives all grounds of defence to that action then existent and within the plaintiff's knowledge. JANAKI AMMAL v. KAMALATHAMMAL, **7 M.H.C. 263.** [*R.*, 1 A. 75, 14 B. 31 ; *D.*, 1 P.R. 1904.]

(19)—*Withdrawal of original plaintiff—Substitution of new one.*—Though the substitution by the Court of the purchaser of the original plaintiff's rights in the place of the latter, was irregular, still, such irregularity was held to be cured by the consent of the defendant as was evidenced by his conduct in offering no opposition to what took place in the first Court, and in actually appealing against the judgment on the merits, making the substituted plaintiff one of the respondents. BEER CHUNDER ROY v. SHAIKH TUMEEZOODDEEN, **12 W.R. 87.** (9 W.R. 487, *D.*)

(20)—*Ameen's report—Objections withdrawn before Deputy Collector—Revival of objection in appellate Court.*—Where parties have before the Deputy Collector withdrawn their objections to the Ameen's report, the lower appellate Court is wrong in going into any question as to the correctness of that report. BHUGOBUTTY BURMONEE v. GOUR CHUNDER MUNDUL, **9 W.R. 267.**

(21)—*Order of Court directing adjustment of account between parties—Objection to account not taken in time—Effect.*—Where a Court directed an Ameen to adjust the account between the parties to a suit according to the account given in by the defendant, and the plaintiff took no exception to it either when the Court ordered the accounts to be taken or when the report was filed by the Ameen, and the accounts were moreover taken in the plaintiff's presence, *held*, the lower appellate Court ought not to have disallowed the sums debited in the account, because the defendant had failed to prove each item mentioned in his account. KANTEE CHUNDER DUTT v. GOPEE MADHUB NEOGEE, **11 W.R. 3.**

(22)—*Mesne profits—Claim of judgment-debtor for deduction when to be made—Execution.*—If a judgment-debtor who has been decreed to pay mesne profits claims a deduction on account of Government revenue which he has paid, he should, when called upon by the executing Court to show cause why he should not pay the amount of mesne profits claimed by the decree-holder, bring forward that objection and make good his claim. If he fails to do so, the appellate Court will not interfere. NUBO COOMAR CHATTERJEE v. RAMDHUN CHATTERJEE, **15 W.R. 266.**

Waiver—*continued.*

(23)—*Purchase of zemindari rights by Government—Purchaser at sale of such rights by Government—Settlement by Government with taluqdars—Position of purchaser and taluqdars.*—The Government, under its rights of purchase in auction of the zemindari rights of certain pergunnahs, not only waived its rights to cancel the tenures of the talookdars but actually admitted them to settlement, held out to them a promise of renewal, and at the time when it disposed of its zemindari rights to the defendants, recorded a resolution on a petition presented on behalf of the talookdars, that nothing was sold by the zemindari rights and that the taluqdari rights, whatever they might be, would be respected. The High Court was, under the circumstances, of opinion that the defendant, the purchaser, was bound to respect the intentions of Government and could not claim to put in force any rights which his vendor, the Government, had actually waived, and was, consequently, bound to respect the tenures of the plaintiff, a taluqdar, and of persons in his position. OBHOY CHURN ROY v. RAJAH ASANOOLAH, **2 W.R. Act X, Rul. 81.** [*Affirmed*, 13 M.I.A. 317.]

(24)—*Execution sale—Proclamation.*—When the Court adjourned an execution sale and it was not at the request of the judgment-debtor, though it may have been in his interest, it was held that there should be a strict compliance with the law that requires thirty days to elapse between the proclamation and the sale. The mere application on date of sale by the judgment-debtor that only a share of the property should be sold on the ground that the proceeds would be enough to satisfy the decree, cannot amount to a waiver of the proclamation. HURBANS SAHAI v. BHAIRO PERSHAD, **4 C.L.R. 23.** [*F.*, 4 C.L.R. 27.]

(25)—*Execution without notice served—Objection to want of notice.*—A judgment-debtor who has appeared and contested the right of the decree-holder to execute his decree, cannot object that a year having elapsed from the date of the decree, no notice had been served as required by law. GRISH CHUNDER BANERJEE v. BHANOO MOTEE CHOWDHRAIN, **11 W.R. 329.**

(26)—*Execution of decree—Inconvenience to decree-holder—Waiver.*—H obtained a decree against K ordering the latter to reconstruct a verandah in the family house which had been improperly pulled down by him, within one month of the date of final orders according to a certain estimate. The decree also provided that in default, H was to have the right of rebuilding the verandah himself and be reimbursed by K, the expense not exceeding the estimate. K commenced the work more than a month after the final orders. More than one month after such commencement H procured an injunction forbidding K from proceeding with the repairs on the ground that he was not making them in accordance with the decree. K objected and pleaded necessity. *Held* that

Waiver—*continued.*

in making alterations which caused inconvenience to H, K had contravened the decretal order. *Held*, however, that H's conduct in looking on without remonstrance for a month while K was incurring considerable expense amounted to a waiver on his part of his right to take the matters into his own hands. *Held*, further, that nothing could be decreed which is impossible of execution. Although K as the original wrong-doer has no claim to be exempted from any consequence of his acts, still if, in doing what the decree supposed to be possible and which H declares is possible, damage is done to the premises, the debtor, K, after what he has done, ought to be held free from further liability. GOPEE KISHEN GOSSAIN v. HEM CHUNDER GOSSAIN, **16 W.R. 38.**

(27)—*Civ. Pro. Code, ss.* 244, 291, *and* 311—*Execution sale brought about by fraud—Waiver of right to object to sale—Plea of waiver when to be given effect to and to what extent—Public policy—Circumstances from which waiver to be inferred—Knowledge of rights waived, necessity of proving—Burden of proof—Presumption.*—A waiver is an intentional relinquishment of a known right, or such conduct as warrants an inference of the relinquishment of such right, and there can be no waiver, unless the person against whom the waiver is claimed had full knowledge of his rights and of the facts, which would enable him to take effectual action for the enforcement of such rights. The burden of proof of such knowledge is on the person who relies on the waiver, and such knowledge must be made to appear. A presumption of waiver cannot be rested on a presumption that the right alleged to have been waived was known. When it appeared from the proceedings that a judgment-debtor only waived objections to an execution sale, on the ground of (1) non-issue of fresh sale-proclamations when the sale was adjourned from time to time, and (2) inadequacy of price as resulting therefrom, *held*—that this did not prevent him from attacking the sale on the ground (1) that the sale proclamation had never been issued and had been fraudulently suppressed at the decree-holder's instance and (2) that the price realised was inadequate by reason of the decree-holder's fraud. Whether there has been a waiver or not of the rights of a judgment-debtor to object to a sale and to what extent they may have been waived must depend upon the circumstances of each individual case; and the question has to be decided, not merely upon the language of the petitions preferred by the judgment-debtor, but with regard to the whole of the proceedings in the case, and particularly with reference to the order made by the Court upon the petitions. The right of waiver is subject to the control of public policy, which cannot be contravened by any conduct or agreement of the parties; and an agreement which seeks to waive an illegality may be void on grounds of public policy or morality. *Quære*—Whether, if it were made out that the judgment-debtors had, in fact, waived all possible rights to object to the validity of the sale, a Court of justice would give effect to the plea of waiver, when the sale was brought about by fraud upon the processes of the Court. DHANUKDHARI SINGH v. NATHIMA SAHU, **11 C.W.N. 848=6 C.L.J. 62.** [*F.*, 6 C.L.J. 111.]

(28)—*Execution of decree—Consent decree in mortgage suit—Decretal amount to be paid by instalments—Whole amount to become due in default—Default by defendant—Overdue instalments received by decree-holder — Effect—Waiver.*—A consent-decree in a mortgage suit provided for payment of the decretal amount by annual instalments of Rs. 50, payable on the 30th April of each year, and for the realization of the full amount due under the decree from the mortgaged property in default of payment of any one instalment. The 1st instalment became due on 30-4-1888, and the defendants having made default, the decree-holder took out execution and got an order for sale of the mortgaged property. But the sale was dropped on the judgment-debtor having paid Rs. 60 to the decree-holder out of Court on 13-11-1888 and the latter notifying the same to the Court. The second instalment also was not paid on the due date (30-4-1889), but subsequent to that date and before the date of the third instalment, several payments were made to the decree-holder amounting in all to Rs.53. After the third instalment became due, the latter took out execution for recovering the balance due under the decree. The lower appellate Court *held*, dismissing the application for execution, that the decree-holder had waived his right to execute the decree by accepting the above payments The High Court, on second appeal, *held* that the decree-holder had a right to execute the decree. The several payments in question, being only on account of the whole decree and not on account of the specific instalments in arrears, could not be sufficient evidence of a waiver. And even if they be taken as payments of overdue instalments, they cannot by themselves prove a waiver. BALAJI GANESH v. SAKHARAM PARASHRAM ANGAL, **17 B. 555.** [*Cons.*, 27 B. 1; *R.*, 8 C.W.N. 66=31 C. 83.]

(29)—*Suit for rent—Offer of rent in kind—Refusal of plaintiff—Suit dismissed — Subsequent suit for value of crop offered as rent if maintainable.*—Where a landlord sues to recover money-rent and refuses to accept rent in kind when offered by the defendant, *held*, that he cannot, after the dismissal of his suit, subsequently sue the tenant for the value of what was offered to him. MOHUNT NARAIN GEER v. GOUR SURUN DOSS, **23 W.R. 368.**

(30)—*Suit for possession against lessees—Relinquishment of title by widow in favour of reversioners, when valid.*—Suit for possession of a shop and for arrears of rent. The facts were that B and S were the joint owners of a shop; plaintiffs were the heirs of B, and the defendants the sub-lessees under the lessee of S. The widow of S was living. She had presented a

Waiver—*continued.*

petition to the effect that she had relinquished her title in favour of the plaintiffs who would succeed to the estate of S. in the event of her death. *Held* that this could not amount to a legally valid relinquishment of her share, so as to entitle the plaintiffs to sue for her share. OOMA CHURN KOONDO v. BHOOBUN MOHUN PAL PODDAR, **10 W.R. 98.**

(31)—*Right to maintenance — Bequest — Arrangement by members of testator's family—Maintenance not claimed for 12 years—Support by family—Presumption—Act* VIII *of* 1859, s. 348—*Cross objection by respondent against co-respondent.*— Where a right to maintenance bequeathed to a person is to be a charge on the testator's estate, the former's rights will not be affected by any private arrangement entered into by the members of the testator's family who are equally liable to pay the maintenance. If a person to whom a right to maintenance has been bequeathed has chosen to live separately from the time of the testator's death, he is entitled to claim the allowance; but, if he has chosen to reside in, and be supported by, the testator's family, and has made no claim for maintenance for 12 years after the testator's death, it may be fairly inferred that he has accepted such residence and support and waived his right to the specific allowance given by the will. A plaintiff (respondent) is competent to take an objection under s. 348, Act VIII of 1859, against defendants who have not appealed, but who are *pro forma* brought in as co-respondents, where such objection equally affects the appellant. RAM LAL MOOKERJEE v. MUSSAMUT TARA SOONDUREE DEBIA, **W.R. 1864, 3.**

(32)—*Act* VI *of* 1862, *B. C., s.* 4, *applicability of, only to tenants and ryots in possession—Registry of transfer under s.* 27 *of Act* X *of* 1859.—S. 4 of Act VI of 1862 applies to under-tenants and ryots of whose possession there can be no doubt. Where a tenure has been transferred to a person not in possession, he is not entitled to deposit the rents in the Court under this section, but should take steps under s. 27 of Act X of 1859 to register his transfer in the serishtah of the zemindar, and, having resorted to this course, apply to the Collector on the refusal of the zemindar to register the transfer. DULLI CHAND v. MEHER CHAND SAHOO, **8 W. R. 138.**

(33)—*Sale, setting aside of—Sale of putni tenure—Waiver—Applications of some, barred by limitation—Consolidation—Sale of entire tenure, if to be set aside.*—Whether there has been a waiver or not of the rights of the judgment-debtors, and if so, to what extent, depends upon the circumstances of each case; the existence of an intent to waive is a question of fact, and the best evidence of intention is to be found in the language and conduct of the parties; the Courts cannot lay down any stereotyped and inelastic rule, by which all cases of waiver must be governed. (6 C.L.J. 62, *F.*) Where, in an application made on 4th February on behalf of the judgment-debtors, for adjournment of the execution

Waiver—*continued.*

proceedings for one month to enable them to pay the decretal amount, it was stated that, if they failed to pay the amount on 1st March, the sale might be held without the issue of a fresh proclamation to which the petitioners would not raise any objection on the ground of irregularities, and the Court passed the following order: "judgment-debtors' petition consented to by the decree-holder, the sale is stayed till noon of the 1st March for sale. Fresh sale notice waived by judgment-debtors:" *Held*, that the judgment-debtors waived the issue of a fresh proclamation of sale but did not waive any objection in respect of the proclamation previously issued. (3 I. A. 230, 26 W. R. 46, 2 C. L. J. 584, 25 W. R. 34, 2 C. L. J. 589, *D.*) Where an application of two of the judgment-debtors for setting aside a sale of the putni tenure was allowed, and the applications of the others, which were heard together and tried as if they constituted one proceeding, were dismissed as barred by limitation: *Held*, that the sale should be set aside in its entirety—. RUDRANUND THAKUR v. PIRTHI CHAND LAL, **14 C.L.J. 346.**

(34)—*Accepting of irregular payments—No right to enforce covenant — Mortgage-deed.*—Where a mortgagee accepts irregular payments as payments made in satisfaction of a covenant in a mortgage-deed, which provided for payment by certain instalments, he must be taken to have waived his right to enforce the penalty provided for the breach of the covenant which he had an option to enforce under the deed. SAKHWAT HUSAIN v. GAJADHAR PERSHAD, **3 A L.J. 469=28 A. 622.** (5 A. 289, *F.*) [*D.*, 5 A.L.J. 609=A.W.N. 1908, 255.]

(35)—*Parol consent to arbitration — Waiver of omission as to time of award.*—The parol consent of the parties to a deed of submission before the arbitrator, to waive omission as to the time when the award is to be made, will not cure the defect. NUSSERWANJEE PESTONJEE v. MEER MYNOODEEN KHAN WULLUD MEER SUDROODEEN BAHADOOR, **6 M.I.A. 134.**

(36)—*Beng. Reg.* XIV *of* 1829, *s.* 2, *cl.* 1—*Answer to appeal—Security for costs—Semble.*—The putting in an answer to the appeal, before objecting to the want of security for costs, operates as a waiver by the respondent for the want of security for costs, required by Ben. Reg. XIV of 1829, s. 2, cl. 1. WISE v. JUGBUNDOO BOSE, **7 M.I.A. 431=12 W.R. 229=1 Sar. 698.**

(37)—*Act* VIII *of* 1859—*Arrest before judgment — Bail taken instead — Irregularity — Waiver—Estoppel.*—A filed a suit against B for the recovery of a sum of money. Before the suit came on for hearing, he applied for warrant of arrest against B. and a warrant was prepared and ready for issue, when the pleader for B appeared before the Court and requested the Court not to issue the warrant, so that B may escape the "*odium of an arrest*," but that he himself would stand security. The

Waiver—*continued.*

Court passed the usual order accepting the pleader as bail, without actually arresting B. On application being made to enforce the security on default of appearance by B, it was contended that in consequence of the deviation from the practice prescribed by s. 75, Civ. Pro. Code, the order for the arrest and the proceedings which followed, including the forfeiture of the security, were illegal. *Held* that, as the defendant himself waived his right to the procedure prescribed by that section and acted as if the proceedings were regular, it was not open to him to object to such proceedings. COL. N. ELPHINSTONE v. RAHEEM BUX, **77 P.R. 1868.**

See ACT X OF 1870, 17 B. 299.

Holding enquiry on close holiday—Consent. *See* BEN. ACT VI OF 1871, s. 17, A. W. N. 1887, 57.

See BOM. ACT V OF 1879, ss. 85, 86, 87, 16 B. 586.

See PUN. ACT IV OF 1872, s. 13, 86 P L.R. 1901=22 P.R. 1901.

Evidence—Documentary evidence—Conduct amounting to tacit waiver of proof—Necessity for formal proof.—*See* APPELLATE COURT—REJECTION OR ADMISSION OF EVIDENCE, 10 M.L.J. 242.

See ARBITRATION—MISCELLANEOUS, U. B.R. 1897—1901, Vol. II, 14.

Instalment bond — Whole amount becoming due on default in one instalment—Acceptance after default, if waiver of condition—*See* BOND, 5 M.H.C. 198.

See BOND, 2 N.W.P. 83.

Illegality of remand—Consent of parties, Estoppel—*See* CIV. PRO. CODE, 1882, s. 564, 15 M.L J. 236=28 M. 437.

Objection as to jurisdiction of Court by defendant—Oral transfer of liability to pay money under written contract—*See* CIV. PRO. CODE, 1908, s. 86, 69 P.L.R. 1903=40 P.R. 1903.

Suit against Sovereign—Princes and Ruling Chiefs—*See* CIV. PRO. CODE, 1908, s. 86, 21 B. 351.

See CIV. PRO. CODE, 1908, O. I. r. 13, 155 P.L R. 1903.

See CIV. PRO. CODE, 1908, O. II, r. 2, 2 M. L. J. 235.

See CIV. PRO. CODE, 1908, O. XXI, rr. 69, 90, 6 C. W. N. 42.

Adjournment of sale at the instance of judgment-debtor — Waiver of irregularities—*See* CIV. PRO. CODE, 1908, O. XXI, rr. 69, 90, 6 C.W.N. 48.

Deposit by purchaser of immoveable property —Option of set-off when exercised—Of cash deposit—*See* CIV. PRO CODE, 1908, O. XXI, rr. 72 84, 85, 86, 5 C.L.R. 181.

Waiver—*continued.*

Is a mixed question of fact and law—Agreement to waive, if valid—Fraud upon process of Court—*See* CIV. PRO. CODE, 1908, O. XXI, r. 90, 13 C. L. J. 192=9 Ind. Cas. 698.

See CUSTOMS—PUNJAB—ALIENATION, 56 P.L.R. 1903=15 P. R. 1903.

Enhancement of rent—Service of notice—by conduct —Grounds not taken in appeal—Matter of law—Ben. Act VIII of 1869, s. 14—*See* ENHANCEMENT OF RENT—ENHANCEMENT, NOTICE OF, 2 C.L.R. 297.

Execution proceedings—Omission of judgment-debtor to put forth his title at the sale, whether estops his from subsequently setting up title—*See* ESTOPPEL — ESTOPPEL BY CONDUCT, 14 B. 558.

Jurisdiction — Suit in French Court—No objection taken as to jurisdiction— Right of defendant to plead want of jurisdiction after passing of decree—*See* ESTOPPEL—ESTOPPEL BY COUNDUCT, 8 M.H.C. 14.

See EVIDENCE—PAROL EVIDENCE, 7 M. H.C. 189.

Mortgage deed—Attesting witness not examined—No objection taken to admissibility of mortgage deed in first Court — Waiver of objection—*See* EVIDENCE ACT, 1872, s. 68, 13 M.L.J. 143.

Evidence to contradict statement in a registered kabuliyat—Kabuliyat not intended to be acted upon—*See* EVIDENCE ACT, 1872, s. 92, 6 C.W.N. 242.

See EXECUTION OF DECREE—MODE OF EXECUTION, 5 N.W.P. 18.

Of rights acquired by operation of law—*See* HINDU LAW—INHERITANCE, 2 Agra 173.

Acceptance of overdue instalments—Waiver —*See* INSTALMENT, 3 S.L.R. 137=4 Ind. Cas. 479.

Debt payable by instalments—Stipulation for payment of entire debt on default in one instalment — by creditor, effect of — *See* INSTALMENT, 4 B. 96.

Bond payable in instalments— Default—Election—*See* INSTALMENT, 3 M. 61.

Mere omission to sue, not a—How may be effected or inferred—*See* INSTALMENT BOND, 13 C.W.N. 1010=4 Ind. Cas. 17.

See INSTALMENT BOND, 3 A. 514, 31 C. 83 =8 C.W.N. 66.

What amounts to waiver is a mixed question of law and fact—May be raised in second appeal—*See* INSTALMENT DECREE, 6 Ind. Cas. 138.

Of right to interest on rent by landlord—*See* INTEREST—SPECIAL CASES, 5 C. 102=4 C.L.R. 49.

See INTEREST—STIPULATION IN THE NATURE OF PENALTY, A.W.N. 1886, 135.

Waiver—*continued.*

See INTEREST—MISCELLANEOUS, W.R. F.B. 117=Marsh, 394=2 Hay 423.

See JURISDICTION—QUESTION OF JURISDICTION, 13 B. 650.

Waiver and acquiescence of parties, whether, and when, confer jurisdiction—*See* JURISDICTION—QUESTION OF JURISDICTION, 11 B. 153.

Decree for ejectment—Suit for rent for period previous to decree—Execution of decree—Right to eject—Waiver—*See* LANDLORD AND TENANT—EJECTMENT, 10 C.L.J. 187=1 Ind. Cas. 753.

Acceptance of rent after expiry of notice to quit, if waiver—*See* LANDLORD and TENANT—EJECTMENT, 12 C.W.N. 1059.

Result of—of forfeiture—*See* LANDLORD AND TENANT—FORFEITURE, 20 B. 439.

See LANDLORD AND TENANT — FORFEITURE, 14 C. 176.

Case where leave, under cl. 12 of Letters Patent, Calcutta, 1865, required before Court can entertain suit—Defendant on service of writ on him taking no step in the action except moving to set aside the service of writ on him—Defendant's action a waiver of objection by jurisdiction —*See* LETTERS PATENT, HIGH COURT, 1865—CALCUTTA, s. 12, 7 C.L.J. 441=35 C. 394=12 C.W.N. 705.

What does not constitute—*See* LIMITATION—GENERAL, 31 C. 297, 5 M.L.J. 241.

What amounts to waiver of rights under an instalment bond — *See* LIMITATION ACT, 1908, s. 9, art. 75, 9 C.L.J. 226=36 C. 394=13 C.W.N. 1004=1 Ind. Cas. 49.

See LIMITATION ACT, 1908, art. 181, 15 C. 502.

Pre-emptor's offer to pay sale-price to purchaser, when amounts to — Of pre-emptive right— *See* MAHOMEDAN LAW — PRE-EMPTION...NATURE AND EXTENT OF RIGHT, 16 A. 300=A.W.N. 1894, 91.

See MALABAR LAW—MORTGAGE, 15 M. 480=2 M.L.J. 231.

Of right to cancel arrangement for payment by instalments—*See* MORTGAGE—CONSTRUCTION OF MORTGAGE DEEDS, A.W.N. 1906, 139.

Whether mortgagor's appearing to contest defective notice of foreclosure, issued to him under Reg. VII of 1806, and his offering to pay proper persons entitled amount to waiver of right to take advantage of legal defects of the notice in subsequent suit for redemption by him —*See* MORTGAGE — REDEMPTION, 28 P.R. 1903=41 P.W.R. 1908=141 P.L.R. 1908.

Mortgage—Resumption by Government of portion of lands mortgaged and subsequent sale to mortgagor—Equity—Mortgage—*See* SALE OF MORTGAGED PROPERTY, 5 C.L.R. 227.

Waiver—*concluded.*

See MORTGAGE—MISCELLANEOUS, 8 A. 194=A W. N. 1886, 50.

See PLAINT—REJECTION OF PLAINT, 126 P. R. 1888.

See PRE-EMPTION—GENERAL, 1 O.C. 254.

See PRE-EMPTION—RIGHT TO PRE-EMPT, 22 P. R. 1881.

See PRINCIPAL AND AGENT—AUTHORITY OF AGENTS, 1 N.W.P. 38.

Landlord and tenant—Suit by landlord for damages for breach of covenant not to cut and carry away trees—Waiver of jurisdiction—*See* PROVINCIAL SMALL CAUSE COURTS ACT, 1887, sch. II, art. 31, 26 M. 176=12 M.L.J. 264.

Suit for rent and eviction—Waiver of trespass—Decree for use and occupation—*See* RENT, SUIT FOR, 9 C. 908=13 C.L.R. 69.

See SALE—SALE IN EXECUTION OF DECREE—GENERAL, 7 C. 613=9 C.L.R. 398.

Of irregularities in execution sale how made —What was waived, how inferred—Abandonment of legal objection by pleadings - Estoppel —*See* TRANSFER OF PROPERTY ACT, 1882, ss. 67, 90, 2 C.L.J. 584.

Right to waive an advantage of a particular law or rule—Public policy—*See* TRANSFER OF PROPERTY ACT, 1882, ss. 88, 89, 10 C.L.J. 91=1 Ind. Cas. 677.

Or abandonment of right, what constitutes—Negligence in the enforcement of the claim, effect of—Distinction between laches and acquiescence—*See* TRUSTS ACT, 1882, s. 90, 6 N.L.R. 12=5 Ind. Cas. 431.

See VENDOR AND PURCHASER—VENDOR, RIGHTS AND LIABILITIES OF, 13 M. 158.

Provisions in Civ. Pro. Code relating to verifications of written statements, nature of—Observance might be waived by plaintiffs—*See* WRITTEN STATEMENT, 22 C. 268.

Wajib-ul-arz.

See PRE-EMPTION — CONSTRUCTION OF WAJIB-UL-ARZ.

(1)—*Absconding co-sharers — Trustee.*— A clause in the administration-paper of a village, stating in general terms that absconders from the village can receive back their property on their return, can neither be availed of by, nor affect, the rights of persons not parties to it. PIAREY LAL v. SALIGA, 2 A. 394.

(2)—*Wajib-ul-arz — Absent share-holders—Trust.*—An entry in an administration-paper that absent share-holders shall, on their return to the village, have their shares surrendered to them by their present occupiers, does not necessarily constitute a valid trust in favour of such absentees, though it may be evidence of such a trust. Such an entry cannot be regarded

Wajib-ul-arz—*continued.*

as evidence of a pre-existing trust or as an admission of such trust by the occupiers. HARBHAJ v. GUMANI, **2 A. 493.** [*R.*, 3 A. 458, 13 C.P.L.R. 99.]

(3)—*Pre-emption, varieties of.*—The right of pre-emption may be founded on Muhammadan Law, or, as is more generally the case, where it affects the Hindus, on long established custom having the force of law, or an special contract between the share holders; and the wajib-ul-arz may record the practice of pre-emption as based on any of these grounds; and the entry may be evidence either of custom or of the contract. ISRI SINGH v. GANGA, **2 A. 876, F.B.**

(4)—*Suit by Zemindar for haqq i-chaharam—Execution of decree—Sale of house in Mohalla—Right based on wajib ul-arz—Liability of auction purchaser.*—Suit by Zemindar of a mohalla against the purchaser (decree-holder) in execution of a decree, for one-fourth of the sale proceeds of a house in such mohalla sold in such execution. The right claimed was based upon the terms of the *wajib-ul-arz* which stated, *inter alia*, that when a house in such mohalla was sold, a cess called *chaharam* was received by the Zemindar "according to the understanding arrived at between the Zemindar and the seller." *Held*, that the plaintiff had not acquired under the provisions of the *wajib-ul-arz* any right to one-fourth of the sale proceeds, that he could not claim such right against the auction-purchaser who was not a "seller," and that the terms of the *wajib-ul-arz* were only applicable to private and voluntary sales, and not to those held compulsorily under process of law. BENI MAHO v. ZAHURUL HAQ, **3 A. 797.**

(5)—*Evidence of custom—Entries in* wajib-ul-arz—*Express words necessary.*—Entries as to custom in a *wajib-ul-arz*, however important they may be as evidence of such custom, are not conclusive proof. In any case, express words are necessary to prove any such special custom as would modify the general law. In the absence of such words in a *wajib-ul-arz*, the general Hindu law of adoption cannot be interfered with as to the widow's power of adoption. (*N.B.*—The question of a Hindu widow's power of adoption with reference to the text of the different schools of Hindu law and the cases decided by the different Courts, elaborately discussed. TULSHI RAM v. BEHARI LAL, **12 A. 328.** [*R.*, 17 A. 294, F.B.]

(6)—*Object of — Recording sole proprietor's wishes, improper.* — A *wajib-ul arz* was never intended to be used as an indirect means of giving effect to the wishes of a sole proprietor with regard to the nature of his tenure or the mode of devolution of the property which should obtain after his death, its purpose being to furnish a trustworthy record of existing local customs. SUPERUNDDHWAJA PRASAD v. GARURAD DHWAJA PRASAD, **15 A. 147 = A. W.N. 1893, 85.** [*R.*, 5 A.L.J. 79.]

Wajib-ul-arz—*continued.*

(7)—*Admissible evidence.* — Wajib-ul-arzes are admissible as official documents made in accordance with law. GARURUDHWAJA PARSHAD SINGH v. SUPARANDHWAJA PRASAD SINGH, **10 M.L.J. 267, P.C. = 23 A. 37 = 5 C.W.N. 33 = 27 I.A. 238 = 2 Bom. L.R. 831 = 7 Sar. 724.**

(8)—*Wajib-ul arz, meaning of—Act* XIX *of* 1873—*Effect of recital in a* wajib-ul-arz—*Construction.*—The term *wajib-ul-arz* in the North-Western Provinces is applied to what is considered to be the most important document contained in the official records relating to the village administration. Entries therein, properly made and authenticated by the signatures of the officers who made them, are admissible in evidence under s. 35 of the Indian Evidence Act in order to prove a family custom of inheritance, or, under s. 48 as the record of opinions as to the existence of such custom by persons likely to know of it. It would be incorrect, to lay down, as a general proposition, that a recital in a *wajib-ul-arz* cannot operate as a will in the case of a Hindu. The weight to be given to statements in a *wajib-ul arz* must depend, in each case on the circumstances in which the entries were originally made and the corroboration they receive from extrinsic evidence. A *wajib-ul-arz* contained the following provision: "Seven years ago, I adopted my sister's son M. He is my heir and will be the owner. If, after this agreement, a son is born to me, half the property will be received by him and half by the adopted son. If more than one son are born to me, the property will be equally divided among them, including the adopted son, as brothers." The natural-born son contemplated above was born but he died childless. On the construction of the above clause: *Held*, (1) that the words used were descriptive only; (2) that it was the intention of the maker of the *wajib-ul-arz* to give his property to M, as his adopted son capable of inheriting by virtue of the adoption and as the adoption was invalid it gave M the right to inherit, and the gift therefore had no effect upon the property. MUSSAMMAT LALI v. MURLI DHAR, **8 Bom. L.R. 402 = 3 A.L.J. 415 = 10 C W.N. 730 = 3 C.L.J. 594 = 28 A. 488 = 33 I.A. 97.**

(9)—*Construction of document—House tax—Cess —. Rent*—Under the wajib-ul arz of a village, called Radhakund, the zemindar was declared to be entitled to one *taka* (six pies) per month for every house from the occupants of the village, and also from the owners of shops and temples. *Held*, that this payment (which was called "gharghanna") was not a house-tax or cess, but merely ground rent and did not require special sanction. BALWANT SINGH v. SHANKAR, **A.W.N. 1908, 95 = 5 A. L. J. 361 = 30 A. 235.**

(10)—*Pre-emption — Custom or contract—Interpretation of document—Exchange - Variation in terms of* Wajib-ul-arz.—The right of pre-emption arises in respect of an exchange. Where there has been a variation in the terms

Wajib-ul-arz—*continued.*

of the *Wajib-ul-arz* prepared respectively at two settlements, and the previous *wajib-ul-arz* recorded a custom, *held*, that the variation in the terms of the later *wajib-ul-arz* did not necessarily affect the custom. DARYAO SINGH v. JAHAN SINGH, **6 A.L.J. 735=31 A. 539=3 Ind. Cas. 903.** (3 A.L.J. 646, *D.*) [*Expl.*, 7 A.L.J. 406].

(11)—*Pre-emption*—Wajib-ul-arz—*Construction—Contract or custom.*—Where a *Wajib-ul-arz* said; "*Aindn jari rakhna rawaj shufa ka kumko manzur hai*:' *Held*, that it was a record of the existence of a custom of pre-emption which the co-sharers wished to continue. HAZARI LAL v. DURGA PARSHAD, **5 Ind. Cas. 114=7 A.L.J. 173=32 A. 187.** (A.W.N. 1908, 120, 5 A.L.J. 470, *D.*)

(12)—*Pre-emption*—Wajib-ul-arz—*Construction—Contract or custom.*—The words used in a *wajib-ul-arz* were *koi muqadma haq shufa ka dair nahin hua aiyando jari rakhna shufa ka ham ko manzu hai. Held*, that the words were a record of contract and not of custom. KANCHAN SINGH v. MANI RAM, **7 A.L.J. 213=5 Ind. Cas. 212=32 A. 201.**

(13)—*Pre-emption*—Wajib-ul-arz—*Custom or contract—Construction.*—The *wajib-ul-arz* of a village, prepared before it was partitioned into several *mahals*, gave a right of pre-emption, first, to a near sharer (*hissadar karib*), and secondly to another sharer in the village (*dusre hissadar deh*). No new *wajib-ul-arz* was prepared at the partition. The plaintiff pre-emptor was a co-sharer in one of the *mahals* into which the village was divided, but had no share in the *mahal* in which the property purchased was situate. The vendee was a stranger to the village. *Held, per Stanley, C. J.*—that the plaintiff could assert his right of pre-emption, notwithstanding the partition, and that the words *hissadar deh*, as used in this *wajib-ul-arz*, meant a sharer in the village (22 A. 1, *D.*) *Held, per Banerji, J.*—that the plaintiff pre-emptor could not pre-empt after the partition of the village, as, although he was a sharer in the village, he was not a co-sharer of the vendor, and that the words *hissadar deh* as used in the *wajib-ul-arz* meant a co-sharer of the undivided village for which the *wajib-ul-arz* had been prepared. DORI v. JIWAN RAM, **7 A. L. J. 133=6 Ind. Cas. 17=32 A. 265.** (22 A. 1, *F.*)

(14)—*Pre-emption—Wajib-ul-arz—Construction of—Custom or contract.*—The words in the *wajib ul-arz* were '*Is waste ikrar ham malikan wa lambardaran ka yeh hai ke ta miad boundobast wa ayinda to takmil bondobast sanipaiband rah kar amal daramad karenge.*' *Held*, that the record was a record of contract and not of custom. ASA RAM v. KANHAYA, **7 A.L.J. 365=6 Ind. Cas. 129=32 A. 399.**

(15)—*Pre-emption*—Wajib-ul-arz—*Construction—Custom or contract—Difference in terms of two* wajib-ul-arzes—The *wajib-ul-arz* of a village prepared in 1833, when only two persons owned the village, provided that, if any one of the co-sharers wished to transfer his share in the village, it would be necessary for him to inform his co-sharers and to transfer it to them, but, if the transfer was made without the knowledge of the co-sharers, it was to be void, *held*, that the record was a record of contract which did not last after the settlement. In a later *wajib-ul-arz* prepared in 1860, the preamble was very similar to that of the earlier *wajib-ul-arz*, but the right of pre-emption was given, first, to nearer co-sharers, then to co-sharers in the *thok* and then to co-sharers in other *thoks. Held*, that the later *wajib-ul-arz* also recorded a contract, as the conditions contained in it as to pre-emption differed in material particulars from those in the earlier *wajib-ul-arz.* SRI BHAGWAT SINGH v. RAM JATAN, **7 A.L.J. 406=6 Ind. Cas. 587.** (31 A. 539, *Expl.*)

(16)—*Suit for enhancement of rent—Clause in* wajib-ul-arz *against enhancement, effect of.*—A clause in the *wajib-ul-arz* of a village by which a zemindar had agreed not to enhance rent, was held to apply only during the period of the settlement which was being made at the date of the *wajib-ul-arz*, and not to any period subsequent to such settlement. BAICHOO RAM v. DOWLUT RAM, **2 N.W.P. 8.**

(17)—Wajib-ul-arz—*Copy of, when admissible.*—As the *wajib-ul-arz* on which the suit was based was destroyed in the mutiny, the plaintiff tendered in evidence a book obtained from the tekseel office which purported to contain copies of the *wajib-ul-arz* authenticated by the initials of the Settlement Officer. *Held*, that under these circumstances the lower Court was right in accepting it is a genuine copy of the *wajib-ul-arz* prepared at the time of the settlement and as the copy purported to give the signatures of the persons by whom the original was executed and the name of the official in whose presence the instrument was executed, it was held that the lower Court ought to have accepted the copy in proof not of a *wajib-ul-arz* which had been contemplated but of one which had been executed and accepted. *Held*, also that the *wajib-ul-arz* was not a mere contract but a record of rights made by a public servant, and consequently, without attestation or execution by the proprietors of the *mouzah*, it was entitled to weight as evidence of village custom. DEBI DUTT v. SHEIKH ENAIT ALI, **2 N.W.P. 395.**

(18)—Wajib-ul-arz—*Construction.*—A *wajib-ul-arz* of the village provided that "when any co-sharer wished to alienate his share, he must offer it first to the nearest co-sharer, then to the co-sharer in the thoke, etc.," and that "in case of mortgage or other kind of transfer which did not extinguish the proprietary right, the pre-emptor, etc. *Held*, that these expressions in the *wajib-ul-arz* must be taken to contemplate all alienations, not only by sale and ordinary mortgage, but by conditional sale, and that the term "co-sharer" must be taken to mean the transferee for the time being of a

Wajib-ul-arz—*continued.*

co-sharer's interest. SALIK SAHU v. JAFAR ALI, **A.W.N. 1881, 84.**

(19)—Wajib ul-arz *not signed by vendor—Pre-emption.*—The fact that the *wajib-ul-arz* is not signed by the vendor will not matter, if he knew of it or had assented to it, or knowing of it has not repudiated it. LUCHMAN DAS v. NIRBHEY RAM, **A.W.N. 1881, 114.**

(20)—Wajib-ul-arz—Haqq-i-chaharam—*Custom—Proof.*—In a suit by a zemindar for *haqq-i-chaharam*, based on local custom, the vendor of the property contended that the vendee had agreed to meet the charges and the vendee denied the existence of such custom in the village or in the *wajib-ul-arz.* The Munsiff decreed the suit, finding that the right was sanctioned by the *wajib-ul-arz.* The District Judge, on appeal, found that the suit was based on the *wajib-ul-arz*, but that there had been no sale, and on those findings dismissed the suit and decreed the appeal. *Held*, that the District Judge was wrong in believing that the claim was based on the *wajib-ul-arz* and that there had been no sale. The following issues should be tried and determined by the Court (i) whether there was valid evidence that, by custom, a vendee was liable in the village to pay the *hak*, (ii) whether the class of the vendee operated to make any difference in respect of such liability, (iii) what the *quota* payable should be. ASGHAR ALI v. RAM GHOLAM, **A.W.N. 1881, 137.**

(21)—Wajib-ul-arz—Haqq-i-chaharam—*Compulsory sales.—Held*, that the terms of the *Wajib ul-arz* in this case, which were stated to contain and express the nature and incidence of the cess (*haqq-i-chaharam*), did not contemplate and could not be applied to sales of a compulsory character, such as a sale in execution of a decree. GOPAL MISR v. FAZAL ALI KHAN, **A.W.N. 1881, 165.**

(22)—*Custom*—Wajib-ul-arz—*Further proof.*—Where a claim is based on village-custom, the *wajib-ul-arz* affirming the existence of such custom is not by itself sufficient to support the claim; but it must be supported by proof of instances in which the custom has taken effect. MUHAMMAD ALI v. HARBHAGAT RAI, **A.W.N. 1882, 29.**

(23)—*Wajib-ul-arz—Inheritance--Custom opposed to law.*—In a suit by the daughter's son of a deceased Mahomedan for his share of inheritance against the son and others it was contended by the defendants that daughters could not inherit by the custom of the village as embodied in the *wajib ul-arz*, and in support of the custom a *wajib ul arz* of 1874 was set up. *Held*, that, although as a general rule a *wajib-ul arz* is some evidence of a custom of the village, a *wajib-ul-arz* of 1874 is not a satisfactory evidence of a custom prevailing in 1816 and that such a custom must be considered to be bad as opposed to Mahodmedan Law. RAMZAN ALI v. BECHAI, **A.W.N. 1888, 118.**

Wajib-ul-arz—*continued.*

(24)—*Wajib-ul-arz—Construction of—"Nazdiki hissadar" Zemindari village.*—The expression "*Nazdiki hissadar*" occurring in the pre-emption clause of the *wajib-ul-arz* of a pure zemindari village must be taken to relate to nearness of blood or relationship. GURASARAN SINGH v. AKHANDANAND SINGH, **A.W.N. 1890, 227.** [*R.*, 24 A. 119.]

(25)—*Custom—Evidence — Wajib-ul-arz recorded at the instance of the sole proprietor of the mahal.—Held*, that a document purporting to be a wajib-ul-arz which was drawn up at a time when the mahal to which it related was owned by one single proprietor could not be regarded as any evidence of a custom of pre-emption prevailing in that mahal. JAIMAN BIBI v. MIR ALI HUSEN, **A.W.N. 1898, 89.** (14 I.A. 127 *R.*) [*R.*, 5 A.L.J. 79.]

(26)—*Landlord and tenant — Rights of tenants in respect of houses built with the zamindar's permission in the abadi—Wajib-ul-arz—Construction of document.*—The wajib-ul-arz of a village contained the following provision respecting the building by tenants of houses in the abadi:—"Paragraph 2 regarding construction of a new house. For the construction of a new house the tenant in every way depends upon the zamindar's consent. No particular fee is fixed. Only that which may be agreed on between the parties is given and taken. In case of a tenant's leaving his house the zamindar of the thok in which the house, is situate will be considered its owner, and the tenant on his return will not be entitled to get it back. If any tenant wishes to sell his house, the zamindar will be entitled to one-fourth of the sale price received. A tenant can with the zamindar's permission take earth from a new place: he is not competent to do so without his consent." *Held*, on a construction of this paragraph, that it did not imply that the tenant had the right to mortgage a house built in the abadi by permission of the zamindar. MUHAMMAD RAFI v. TELHU SINGH, **A.W.N. 1902, 140.** (20 A. 248, *F.*)

(27)—Wajib-ul-arz—*Construction of.*—A *wajib-ul-arz* provided that "a co-sharer wishing to sell his share must do so, for such price as any other person may offer, first to a near co-sharer in his own *patti*, next to co-sharers in the same *patti*, after that to near co-sharers in another *patti*, then to co-sharers in the mahal: and then to strangers. *Held*, that it conferred a right of pre-emption upon the class of persons who have under it a right of purchase superior to that of persons belonging to another class, even if the co-sharers belonging to the class last mentioned be the purchasers. SHEOBARAN RAI v. MAHIPAT RAI, **1 A.L.J. 274, Note=A.W.N. 1904, 105.** [*F.*, 26 A. 544=1 A.L.J. 272; *R.*, 27 A. 457=2 A.L.J. 689=A.WN. 1905, 45.]

(28)—*Interpretation — Pre-emptors claiming as sons of vendors—No preference—Re-sale to a co-sharer before suit.*—The *wajib-ul-arz* of a *pattidari* village provided as follows: "The

Wajib-ul-arz – *continued.*

pattidars of all the three parties in this village are own brothers and relations. Hence, should any sharer of any *patti* be willing to sell his share, he shall, in the first instance, offer it to the co-shares of the *patti*, and, in case of their refusal, to any person." The plaintiffs sued for pre-emption, claiming preference on the ground that they were the sons of the vendor. *Held* that the mere fact that it is stated in the preamble of the *Wajib-ul-arz* that the *pattidars* of all the three parties in this village are own brothers and relations, cannot give preference to the plaintiffs. If property which is subject to pre-emption, having been sold to a stranger, is subsequently re-sold by the stranger-vendee, before suit, to a co-sharer having equal rights with those seeking pre-emption, no suit for pre-emption will lie. NASIR ALI KHAN v. NATHO BIBI, **3 A L J. 544 = A.W.N. 1906, 215.** (20 A. 100, *R.*) [*R.*, 5 N.L.R. 136, 6 A.L.J. 699 = 31 A. 530.]

(29)—Wajib-ul-arz—*Interpretation of document—Inconsistent clause to be rejected—Pre-emption.*—Where in the case of sale or mortgage the *wajib-ul-arz* of a village conferred a right of pre-emption in the following order:—(1) a co-sharer in the village (*sharik dehi*), (2) *hissadar patti* degree by degree, and (3) *hissadar* in the village degree by degree, *held*, that the first clause was inconsistent with the two next clauses and should be rejected, the intention being to give a right of pre-emption to persons coming under the second and third clauses in the order mentioned. KUAR LALL SINGH v. KUAR KARAN SINGH, **6 A.L.J. 652 = 3 Ind. Cas. 496.**

(30)—*Landlord and tenant—Grove planted by tenants on the understanding that they will be at liberty to sell it—Custom not proved—Effect of.*—The *wajib-ul-arz* of a village prepared in 1862 recorded that in future a tenant shall plant a *bogh* with the consent of the zamindars, but as regards sale he shall have the power. On the sale of a grove by a tenant who had planted it, to the defendants, the zamindars sued for recovery of possession, on the ground that the *wajib-ul-arz* did not record a custom authorising the tenants to sell. *Held*, that, when permission to plant a grove had been granted on the express condition that the tenants would be at liberty to sell, it was immaterial whether the record was one of a custom or a contract. ISHAR DAR TIWARI v. RAMHARAK TIWARI, **7 A.L J. 587 = 6 Ind. Cas. 872.**

(31)—*Pre-emption*—Wajib-ul-arz — *Interpretation of document — Custom or contract — Evidence Act – S. 13 – Decrees—Admissibility of proof of custom.*—In a suit for pre emption, the plaintiff in proof of the custom produced an extract from the *wajib-ul-arz* of 1872, which was headed "*dasturi-haq i-shafa*," and provided that a co-sharer who wished to sell his share had the right to do so, but that he should offer it (1) to his own brother, (2) to his more distant relatives, and (3) to other co-sharers in the *thok*

Wajib-ul-arz – *continued.*

and village, a sale-deed, two decrees of 1893 and one decree of 1898, while the defendants produced the *wajib-ul-arz* of 1853, the preamble of which ran thus "we record the following conditions in the *wajib ul-arz* to act according to those conditions until the next settlement comes into force" and which, in paragraph 6 headed "mention of the transfer of rights by sale, mortgage or gift" provided that each co-sharer was entitled to transfer his share, but that he should offer it to his co-sharers in certain order, and the *wajib-ul-arz* of the present settlement was silent upon the right of pre-emption, *held* that, upon a proper construction, the *wajib ul-arzes* were *prima facie* evidence of the existence of custom. *Held* also that the sale-deed produced by the plaintiff was no evidence of custom, there being no mention in it either of custom or contract, and the two decrees of 1893, standing by themselves, were no evidence of custom and not admissible under s. 13 of the Evidence Act. MUKHA v. HAR SAHAI, **8 A.L.J. 770.**

(32)—*Official record of local customs.*—A *wajib-ul-arz* is an official record, of more or less weight according to circumstances, but still an official record, of the local customs of the districts in which it is recorded. But a settlement officer should not receive, for entry in the *wajib-ul-arz*, a mere expression of the views of a proprietor, or enter it upon the records relating to the village. Such an entry, being evidence, concocted by one party in his own interest, would render the records useless and misleading. UMAN PARSHAD v. GANDHARP SINGH, **15 C. 20 = 14 I. A. 127, P.C. = 5 Sar. 71.** [*R.*, 12 A. 234, F. B., 12 A 328, F.B., 15 A. 147, 18 A.W.N. 89, 1 O.C. 30, 1 O.C. 301, 5 A.L.J. 79, 4 O.C. 145, 4 O.C. 71, 25 A. 90 = 22 A. W. N. 207.]

(33)—Wajib-ul-arz,—*Construction of.—Hindu widow.*—In a *wajib-ul-arz* it was stated that the widow would remain in possession of her husband's estate with proprietary powers (*baikhtiar malikana*); that she would have power to appoint an heir; that if she failed to appoint an heir, the estate of which she was in possession would devolve not upon her own heir, but upon her husband's heirs (collaterals, &c., &c.) *Held*, that the provisions of the *wajib-ul-arz* were inconsistent with the possession by the widow of an absolute estate in the property of her husband, and did not confer on her unrestricted powers of alienation. BINDRABAN DAS v. TOTRI, **3 O.C. 258.**

(34)—*Custom—Daughters, exclusion from inheritance of—Daughter's sons, exclusion from inheritance by necessary implication*—Wajib ul-arz, *construction of.—Held* that the object of the Thakurs of Oudh in excluding daughters from succession being to preserve the inheritance of the land in the tribe and family to which it has belonged, the exclusion of the daughters necessarily implies the exclusion of daughters' sons as well. Where the *wajib-ul-arz* prepared at the dictation of the Thakur Zemindars of

Wajib-ul-arz—*continued.*

the village in suit related to custom of exclusion of daughters alone, *held*, that it was intended to express thereby that their sons were likewise excluded with themselves. *Held*, further, that the custom of exclusion of daughters' sons from inheritance was proved amongst the Basis Choudhri Thakurs of village Alampur in Pergana Rokha, District Rae Bareli. SHEOMANGAL SINGH v. JAGPAL SINGH, **12 O C. 63-B.=2 Ind. Cas. 253.**

(35)—*Custom*—Ghair-biradri *wife, exclusion of*—Ghair-kuf, *meaning of*—Biradri, *test of*—Wajib-ul-arz, *construction of.*—On a construction of the words *Ghair-kuf* and *Ghir-biradri* as used in a *wajib ul-arz, held*, that they had practically the same meaning; that previous intermarriage was a rough and ready test of equality between families, but not the only test thereof, and that recognition was the chief test of *biradri* for the purpose of a custom excluding a *Ghair-biradri* wife from succession. *Held*, also, that a wife who is not *Ghair-kuf* to her husband must be treated as a *biradri* wife within the meaning of the *wajib-ul-arz*. MUSAMMAT SARWARI BEGUM v. MUSAMMAT KHATIM-UN-NISSA, **12 O.C. 111 B.=2 Ind. Cas. 298.** (28 A. 496, *R.*)

(36)—Wajib-ul-arz—*Construction of document*—Wajib-ul-arz *forbidding sale of trees, applicability of, to sales in execution—Sale in execution of decrees.*—Where a *wajib-ul-arz* provided that tenants who had planted groves had a right to cut standing trees for their household use but could not sell any tree except with the permission of the owner of the land, *held*, that the terms of the *wajib-ul-arz* forbidding sale applied as much to sales in execution of decree as to a private sale. HARPAL SINGH v. JAGWANT SINGH, **13 O.C. 366.**

(37)—Viran, *meaning of—Taluqdar's right to possession*—Wajib-ul-arz, *construction of.*—*Held*, that the term '*viran*' as used in the *wajib-ul-arz* means 'deserted' or 'desolate' but not 'dilapidated'; and where a tenant dies leaving no heir, the house must be deemed to be '*Khali shuda and viran*' within the meaning of the *wajib-ul-arz*, and therefore the taluqdar would be entitled to take possession thereof. NAROTAM DAS v. RAJA MOHAMMAD MEHDI ALI KHAN, **14 O.C. 231.** (10 O.C. 4, *R.*)

(38)—*Supplementary* wajib-ul-arz—*Sale without offer to Malguzar invalid—Limitation applicable to suit to set aside such sale—Right of mortgagee-purchaser on sale being set aside.*—In a case governed by the supplementary *wajib-ul-arz* it is a condition precedent to the exercise of the right of sale to a stranger that the tenure should be offered in the first instance to the Malguzar. If it is not so offered, the sale is invalid and the malguzar has a right to have it cancelled. A suit by the Malguzar to set aside such a sale is not governed by the law of limitation applicable to a pre-emption suit. And where the sale was in favour of the mortgagee in possession on its proving invalid the purchaser was entitled to fall back on his right to possession as mortgagee. PENDARA GOND v. HIRA SING, **1 C.P.L.R. 132.** [*R.*, **15 C.P. L.R. 173.**]

(39)—*Provision authorising cultivators to graze cattle on village waste land—Number of and purpose for which cattle to be kept by each cultivator*—Where a *wajib-ul-arz* provides that cultivators have the right to graze their cattle on the village waste land on a reasonable construction of the clause the cattle to be grazed by the cultivators should be cattle used or kept for the purposes of agriculture. A cultivator is not entitled to keep a large number of cattle for purposes not ordinarily connected with agriculture. The number of cattle kept by him should bear a reasonable proportion to his holding in the village and should not exceed the number which would ordinarily be kept for the purposes of good husbandry for and in connection with a similar holding. RAMKRISHNA SEETARAM v. BALASAHIB, **1 C.P.L.R. 158.**

(40)—*Applicability of provisions relating to building sites to towns.*—There is no hard and fast rule of universal application that the provisions of a *wajib-ul-arz* generally relating to building sites do not apply to a town. If an area within which a town is situated is settled with a Malguzar without exclusion of the town, the Malguzar has proprietary rights over the town in the same way that he has over the remainder of the area and the condition of the *wajib-ul-arz* or administration paper must apply to the town. BAKTAWAR MAL v. PITAMBER, **8 C.P L.R. 29.** (5 C.P.L.R. 76 and 124, *D.*) [*Rel. on*, 12 C.P.L.R. 146; *Diss.*, **16 C.P.L. R. 81.**]

(41)—*Right of absolute occupancy tenantto mortgage his holding without landlord's consent.*—An absolute occupancy tenant could, under the supplementary *wajib-ul-arz*, mortgage his holding by conditional sale without obtaining the consent of his landlord. RUKMA BAI v. GANPAT RAO GOPAL GHATATAY, **10 C.P. L.R. 42.** (1 C.P.L.R. 9, 3 C.P.L.R. 158, *R.*) [*R.*, 6 N.L.R. 69.]

(42)—Gaontia—*Recovery of* chet-begari *dues.*—Before any *gaontia* can recover *chet-begari* dues from the lambardar, he must plead and prove that the services were commuted by the ryots for money payments and that such payments had been appropriated by the lambardar. KUNJBAN GAONTIA v. SHAMSUNDER, **14 C.P. L.R. 73.**

(43)—*Purchase of raiyati land by* gaontia—*Right of other co-sharers in land so purchased.*—The principle underlying the decisions in 10 C. P.L.R. 37 & 40, applies to *gaontiati* villages situated in the Sambalpur district. NIRANJAN PATTI v. SADASHEO PATTI, **14 C.P.L.R. 182.**

(44)—*Of Nagpur—Cl.* XI—*Construction of—Regarding the sale of a house.*—Cl. XI of the new *wajib-ul-arz* of Nagpur contains the following provisions:—" Every person is at liberty to

Wajib-ul-arz—*continued.*

sell or mortgage the materials of his house on leaving the village, or on any other occasion, but he cannot dispose of his house-site, which belongs to the proprietors." *Held*, that this clause did not prohibit the sale of a house or require that, in case of a sale, the house should be dismantled and the materials removed. LAKMICHAND MARWARI v. MT. HARKU BAI MARWARIN, **1 N.L.R. 93.** [*Diss.*, 4 N.L.R. 149; *D.*, 4 N.L.R. 155.]

(45)—*Cl.* 11 *of the Nagpur* wajib-ul-arz—*Construction—Transfer of right to occupy house built on village site—Origin and presumption as to occupancy.*—A right of occupancy by one person of the land of another cannot be assumed. The presumption is the other way. Occupancy is obtained by contract, by prescription, or by the force of statute. Cl. 11 of the *wajib-ul-arz* precludes a transfer of the right to occupy a house built on the village site with the permission of the *malguzar*, and the *malguzar* can eject the transferee as a trespasser (*d*). GOVIND RAO v. AMRIT RAO, **4 N.L.R. 149.** (1 N.L.R. 93, *Diss.*) [*Obs.*, 4 N.L.R. 155.]

(46)—*Malguzars of mauza Jawar in Nimar district—Suit to recover the site of a house in the abadi—Cl.* IX *of* wajib-ul-arz—*Transfer of right.*—The plaintiffs in this litigation are the malguzars of mauza Jawar in the Nimar district, and sued to recover the site of a house in the abadi on the ground that it had been sold by the original tenants in contravention of cl. IX of the *wajib-ul-arz*. They obtained a decree in the first Court, but the claim was dismissed in appeal by the District Judge, who held that the *wajib ul-arz* does not prohibit transfer of the right to occupy a site in the abadi. The *wajib ul-arz* contains the following clause. Every person is at liberty to sell or mortgage the materials of his house on leaving the village or any other occasion, but he cannot so dispose of his house-site, which belongs to the proprietors. *Held*, that the *wajib-ul-arz* relied on by the District Judge did not support his conclusion that the right to occupy may be transferred by sale. The case was remanded to the District Court with directions to re-admit the appeal and to determine it afresh on the merits. MOTIRAM v. RUP KHAN, **4 N.L.R. 155.** (1 N.L.R. 93, *D.*; 27 A. 338; 27 A. 556, *R*)

(47)—Wajib-ul-arz — *Construction — Occupancy tenant, right of, to cut trees for roofing.*—The clause in a *wajib-ul-arz* allowing a tenant with a right of occupancy to cut down trees in his holding for the "use of his field," or for agricultural purposes is sufficiently wide to admit of his cutting trees for roofing his house; and as the words of the *wajib-ul-arz* do not distinctly exclude, they must be held to be consistent with the right of using trees for roofing as well as for agricultural implements. SAHIBA v. KHUSHAL, **79 P.R. 1874.**

(48)—Wajib-ul-arz, *entry in—Construction—Village land, partition of.*—It is general law that a proprietor may partition off his share, unless there be some definite and clear agreement to the contrary with his co-sharers. The main object of the entry in a *wajib-ul-arz*, relating to the partition of village land, being to define the shares of the co-sharers in the event of their agreeing to a division of such land, such entry may be reasonably construed to mean that, when share-holders, not every shareholder, are willing to effect a partition, the partition shall be made in the mode prescribed. MAMRAJ v. JAS RAM, **40 P.R. 1876.**

(49)—*Grazing rights*—Wajib-ul-arz, *provision in, construction of—Cultivators of one village, residing in another, rights of—Cattle of village, meaning of—Grazing grounds common to two or more villages*—Wajib-ul-arz, *absence of entry in—Evidence.*—The provision of the *wajib-ul-arz* of village B, relating to grazing, ran as follows: "The cattle of the entire village, without distinction of proprietors and non-proprietors, shall continue to graze in future in the same manner as they have grazed from old times; no grazing dues shall be collected." *Held*, that persons who resided elsewhere but resorted to village B merely for the purpose of cultivation, were entitled to graze in that village only such cattle as they might from time to time *bona-fide* employ in their cultivation in that village, as such cattle alone could be called "cattle of the village" of B; and that they were entitled under the *wajib-ul-arz* to have it declared generally that they had a right to graze such cattle in whatever parts of the waste the proprietors of the village graze theirs. In case of two or more villages having common grazing grounds, and in cases of one village having a right of grazing its cattle over the lands of another, if a record of such matter is not to be found in the *wajib-ul-arz* of each village concerned, nothing short of the very fullest and clearest evidence would suffice to establish such right. BHUP SINGH v. SARDHA SINGH, **108 P.R. 1876.**

(50)—*Pre-emption*—Wajib-ul-arz—*The* "Karabatian Karib"—*Near kinsmen.*—Plaintiff based his claim, in this suit for pre-emption, upon an entry in the *wajib-ul-arz*, according to which an offer to sell must first be made to his "*karabatian kareeb*," then to the taluqdars, and then to the entire body of the proprietors, and the question had to be decided whether a relative of the seller eight degrees removed from him was a "*karabatian kareeb*" within its meaning in the *wajib-ul-arz*. *Held*, that the words refer only to the near blood relatives of a man and that it would be unreasonable to apply the term near relative to any relative more distant than a third cousin. SITA RAM v. GUJAR, **121 P.R. 1879.** [*R.*, 20 P.R. 1881 N., 196 P.R. 1889, 55 P.R. 1909.]

(51)—*Hereditary tenants—Enhancement of rent, claim for*—Wajib-ul-arz, *provisions of—Construction.*—According to the provisions of the *wajib-ul-arz* in this case, the proprietors were held not entitled to enhance, during the currency of the existing settlement, the rent of

Wajib-ul-arz—*continued.*

hereditary tenants paying at "mokurari" rates. JIWAN v. NATHOO, **36 P.R. 1880, Note 1.** (36 P.R. 1880, *F.*)

(52)—Wajib-ul-arz, *terms of — Hereditary tenant, rate of rent payable by—Absence of provision to enhance rate, effect of—Punjab Tenancy Act, s.* 11.—One of the clauses of the *wajib-ul-arz* of a village was to the effect that the hereditary tenants should pay at the rates recorded in the *khatoni*, and there was nothing said of any power on the part of the owners to enhance those rates. *Held*, that the terms of that clause clearly implied that the rate of rent fixed in the *khatoni*, which was considerably higher than the revenue rate, was not liable to enhancement for the term of settlement and amounted to an agreement which barred the operation of s. 11 of the Punjab Tenancy Act. HAKU v. MANGAL SINGH, **36 P. R. 1880, Note 2.** [*R.*, 43 P. R. 1881.]

(53)—Wajib-ul-arz, *provision in—Gift to son-in-law, validity of.*—The terms of a *wajib-ul-arz* which contemplate gifts only to daughter's sons, sister's sons and daughters, cannot be taken to authorize a gift, not to a daughter or daughter's son, but to a daughter's husband. HUSSAIN BAKSH v. GHULAM KADIR, **65 P. R. 1880.** [*F* 43 P.R. 1883; *R.*, 15 P.R. 1884.]

(54)— *Hereditary tenants*— Wajib-ul-arz, *provisions in, regarding enhancement of rent.*—According to the *wajib-ul-arz* of a certain village, there was a class of hereditary tenants who paid for the use of the land they occupied at the rate paid by the owners, and another class at fixed rates. *Held* that the provisions of the *wajib-ul-arz* clearly gave the owner of the land the power to claim an enhanced rate of rent from each class of tenants, as well as from tenants at will; and that, even assuming that the entry in the *wajib ul-arz* did not apply to hereditary tenants, there was nothing in the *wajib-ul-arz* that precluded the operation of the sections of the Tenancy Act regarding enhancement of the rate of rent. JOWAHIR SINGH v. CHANDA SINGH, **37 P.R. 1883, Note.** (37 P.R. 1880, *D.*)

(55)—Wajib-ul-arz *giving right of pre-emption—Construction.*—In this case the *wajib ul-arz* gave a right of pre-emption to collaterals. *Held* that under it those who are more nearly related would, as in cases of succession, exclude the more remote. NARAIN SINGH v. HARI SINGH, **28 P.R. 1889.**

(56)—*Construction (words)*—'Maveshi *used in* wajib-ul-arz—*Meaning of the term—Grazing right, extent of.*—The term '*maveshi*' used in the *wajib ul-arz*, must be so construed as to restrict grazing rights over *shamilat* land in respect of 'cattle' used for agricultural and domestic purposes by a non-proprietor. It was never intended that a non-proprietor should have the right to graze any animal he might possess on the *shamilat* land. HANSRAJ v. NARAIN CHAND, **86 P.R. 1911.**

Wajib-ul-arz—*continued.*

(57)—*Alluvion—Diluvion—Customary due—Ala Malik—Custom*—Wajib-ul-arz, *entry in.*—When the entry in the *wajib-ul-arz* was to the effect that, if lands are washed away but subsequently re-appear, the original proprietors are entitled to recover the same on payment of certain fixed dues to the *Ala Maliks*: *Held*, that the owners could only recover the lands from the *Ala maliks* on payment of customary dues to them ISAR DAS v. GHULAM HAIDER, **31 P.L.R. 1912.**

(58)— *Pre-emption*—Wajib-ul-arz, *construction of*—Kareebi *and* Karabatdaram *meanings of*—Where the word "*Kareebi*" in a *wajib-ul-arz* is used together with the word '*Karabatdaran*' the same meaning should underlie both words. BHAGWAT PRASHAD TIWARI v. DHARAMRAJ RAI, **1 Ind. Cas. 390.**

(59)—*Pre-emption*—Wajib-ul-arz—*Record of contract or custom—Construction.*—Where a *wajib-ul-arz* recorded "*Ainda jari rakhna riwaj shu a kahamko manzur hai,*" *held*, that the pre-emption was by custom and not by contract. DURGA PERSHAD v. HAZARI LAL, **1 Ind. Cas. 636.**

(60)—*Pre-emption* — Wajib-ul-arz, *construction of—Sharik Zamindar, meaning of—Right of pre-emption among pre emptors of different classes* inter se.—A village was divided into *pattis*, and each *patti* had several *khata khewats*. The *wajib-ul-arz* gave pre-emptive right in the following order: First, own brother; second, *hissadar jaddi* who is *sharik zamindari*; third, *hissadar patti*; and fourth, *hissadar* in another *thok* of the *patti*: *Held*, that *sharik zamindari* in the second category of pre-emptors does not mean a co-sharer in the same *khata khewat*. It means a co-sharer in the zamindari. Where a *wajib ul-arz* provided that the property should be offered, first, to the zamindar's own brother, then to a relative who is a co-sharer, then to co-sharers in the *patti* and so on, the vendor is bound to sell his property in the order mentioned in the *wajib-ul-arz*, and the right of pre-emption can be exercised *inter se*. BHUP SINGH v. TUNDPAL, **2 Ind. Cas. 383.** (27 A. 451, *D.*)

(61)—*Pre-emption*—Wajib-ul-arz—Robkar—*Construction* — Ainda — *Custom or contract—Evidence—Admissibility.*—Where the pre-emption clause in a *wajib-ul-arz* began with the word "*ainda*" and was accompanied by a *robkar* of the Settlement officer that, where no custom was ascertained but the co-sharers agreed to certain matters being recorded in the *wajib-ul-arz*, the word "*ainda*" had been used: *Held* that the *wajib-ul-arz* recorded a contract and not a custom of pre-emption. (A.W.N. 1897, 3, 2 A.L.J. 6, A.W.N. 1907, 17, *R.*) *Held*, further, that the *robkar* of the Settlement Officer was admissible in evidence. BADRI NATH v. MUSSAMMAT MANTORNA KUNWARI, **2 Ind. Cas. 623.** (21 B. 695, 25 A. 90, 34 C. 1059, *R.*)

(62)—*Pre-emption*—Wajib-ul-arz—*Construction—Right recorded as current—Custom or*

Wajib-ul-arz—*continued.*

contract.—In the *wajib-ul-arz* of 1860 of a village, the right of pre-emption was recorded as current. In 1885 the *wajib-ul-arz* was silent as to the right: *Held*, that the custom of pre-emption existed in the village. DUDH NATH DUBE v. LALLU DUBE, **2 Ind. Cas. 855.**

(63)—*Pre-emption*—Wajib-ul-arz—*Construction*—Hissadar qaribi, *meaning of.*—A *wajib-ul-arz* gave right of pre-emption to three classes of persons:—(1) *hissadar qaribi*; (2) *hissadar patti*; (3) *hissadaran deh*: *Held*, that, if the village was at the time of the framing of the *wajib-ul arz* divided not only into *pattis*, but the *pattis* were further divided into *sub-pattis*, the words *hissadar qaribi* meant a co-sharer in the sub-division of the *patti*. PARMESHRI v. BHAWANI PRASAD, **2 Ind. Cas. 855.** (A. W. N. 1901, 183=24 A. 119, A.W.N. 1895, 78, *R.*)

(64)—*Pre-emption*—Wajib-ul-arz—*Record of contract—Partition—No new* wajib-ul-arz *prepared— Contract not abrogated — Intention of the framer of the* wajib-ul-arz.—The right of pre-emption based upon contract entered in a *wajib-ul-arz* is not necessarily abrogated by the mere fact of a partition having taken place in the village. Where a *wajib-ul-arz* provided a right of pre-emption to five classes of persons, (1) own brothers and nephews, (2) descendants from a common ancestor, (3) co-sharers in the same *khewat*, (4) co-sharer in the same *thok*, (5) co-sharers in other *thoks* and in the village; *held*, that the object of giving a right of pre-emption to persons of the fifth class was clearly to exclude outsiders to the village, and it seems that, when the partition took place, the co-sharer still intended that the outsiders should not be allowed to acquire a share in the village. MAKHAN LAL v. JANKIPARSHAD, **2 Ind. Cas. 996.**

(65)—*Pre-emption*—Wajib-ul-arz — *Interpretation of documents—Variation in the terms of* wajib-ul-arzes—*Custom or contract—Custom must be certain.*— Where there is a variation between two *wajib-ul-arzes*, prepared at two successive settlements, as to the manner in which the pre-emptive right is to be exercised, the documents cannot be held to record the existence of a custom. A custom, to which the force of law has to be given by the Courts, is one which must be certain and not liable to change. RAM PRASHAD MISSER v. MAHADEO PARSHAD, **3 Ind. Cas. 640.** (A.W.N. 1897, 3, A.W.N. 1908, 121, 5 A.L.J. 470, 6 A.L.J. 9, 1 Ind. Cas. 82, *Noticed.*)

(66)—*Pre-emption*—Wajib-ul-arz—*Construction — Custom or contract — Presumption of custom* —Where a document is headed "*wajib-ul-arz*" or "*dustor dehi*" and in the body of it is mentioned the custom relating to *shamilat* lands in *patti* and *thok*, and, in the clause relating to pre-emption, it is stated that "at the time of a transfer the custom mentioned above should be observed:" *Held*, that the document was the record, not merely of contract but also of custom, and that the preamble to the *wajib-ul-arz* that "the co-sharers would be bound by the conditions mentioned in the document during the term of the settlement" does not affect the document being a record of custom:—*Held*, also, that, unless from the terms of the *wajib-ul arz* it is clear that it records a contract, the entry in it must be deemed to be the record of a custom. TELU RAM v. RAJA RAM, **3 Ind. Cas. 722.** (A.W.N. 1897, 3, *R.*)

(67)—*Pre-emption*—Wajib-ul-arz—*Construction—Language of the* wajib-ul-arz, *variation in —Custom or contract.*—The *wajib-ul-arzes* prepared at the two successive settlements contained provisions about pre-emption in different words, but the words used in the one were not in conflict with the words used in the other: *Held*, that the documents recorded custom, and that the variation in the language did not affect its existence. BACHI LAL v. LAL CHAND, **3 Ind. Cas. 819.** (A.W.N. 1908, 121, 5 A.L.J. 470, *R.*)

(68)—*Pre-emption* — Wajib-ul-arz, *construction of—Partition, effect of.*—In a suit for pre-emption, the plaintiff relied on a *wajib-ul-arz* which provided:—"A co-sharer wishing to sell his share must sell it, first to brothers who are also co-sharers, second to *hissadars* in the *patti*, third to the *lambardar* of the *patti*, fourth to the *lambardar* of the village, fifth to a co-sharer in the village." When the *wajib-ul-arz* was prepared, the village was an imperfect *pattidari* village. It consisted of no *mahal*, and the whole of the co-parcenary body were jointly responsible for the payment of the revenue. Subsequently the village was divided into two *Mahals*, and the plaintiff held a share in the *mahal* other than that in which the property was situate: *Held*, that the effect of partition was that the plaintiff ceased to be a co-sharer of the vendor, and he had no right to pre-empt. GOPAL SINGH v. GANGA PRASHAD PANDE, **3 Ind. Cas. 827.** (22 A. 1, *F*; 28 A. 286, 2 A. L J. 833, A.W.N. 1906, 2, *D.*)

(69)—*Pre-emption*—Wajib-ul-arz — *Hissadar —Actual co-sharer—Mere record of name in the* Khewat — *Right to pre-empt.* — Where a *wajib-ul-arz* gives a right of pre-emption to a *hissadar*, the right extends to the actual co-sharer in the village. The mere record of a person's name in the *khewat* does not give him a right to pre-empt. A daughter-in-law, whose name is recorded in the *khewat* in respect of a *zamindari*, which formed the joint property of her father-in law and his brother, is not a co-sharer within the meaning of the *wajib-ul-arz*. MUSSAMMAT PARBATI v. BHAWANI SINGH, **4 Ind. Cas. 419.**

(70)—*Pre-emption*—Wajib-ul-arz—*Variation —Custom or contract.*—Where there is a variation in the pre-emption clauses of the two successive *wajib-ul-arzes*, the documents evidence a contract of pre-emption and not custom. MUSSAMMAT BALDEI TEWRANI v. WAZIR KHAN, **5 Ind. Cas. 424.**

(71)—*Pre-emption*—Wajib-ul-arz—*Variation —Custom or contract*—Ikrarnama—*Entry not*

Wajib-ul-arz—*continued.*

clear—Presumption as to custom.—Where an entry in a *wajib-ul-arz* indicates neither custom nor contract, the presumption is that it records a custom. (A.W.N. 1897, 3, *R.*) The mere use of the word "*Ikrarnama*" does not point to the conclusion that the parties intended that all the entries in the *wajib-ul-arz* should be mere evidence of a contract. A slight variation in the terms of the pre-emptive clauses of the two successive *wajib-ul-arzes* does not render the entries in the documents evidence of a contract. BANDHU AHIR v. BISHESHAR RAI, **6 Ind. Cas. 704.** (6 Ind. Cas. 151, 7 A.L.J. 519, *F.*)

(72)—*Pre-emption*— Wajib-ul-arz—*Construction—Karabat karib haquiut men, meaning of —Blood relation.*—The *wajib-ul-arz* of a village contained the following provisions :—"Lihaza jo koi sharik hissa a na bazarye bai ya rehn ya thika ya istighrak intekal karna chahe, to awal shurkai zaili patti mustahak lene intekal milikiat ke honge, jo woh na len, to digar shurkai patti majah lene intikal ke honge, aur bahalat inkar hissadaran patti mazkur, aur hissadaran dusro patti ko jo karabat karib haqiat men rakhte hon, mustahaq lene intikal ke honge :" *Held* that the words "Karabat karib hakiut men" referred to relationship in blood and not to nearness in space. BALDEO PERSHAD v. BHAGWANT SINGH, **7 Ind. Cas. 758.**

(73)—*Pre-emption*—Wajib-ul-arz —*Presumption—Custom or contract.*—A record in the *wajib-ul-arz* must be deemed to be the record of a custom, unless the document itself indicates or it is otherwise proved that the clause relating to pre-emption is the embodiment of a new contract. NATHU v. DILAWAR ALI, **8 Ind. Cas. 526.** (A.W.N. 1897, 3, 7 A. L. J. 902, 7 Ind. Cas. 181, *F.*)

(74)—*Pre-emption* — Wajib-ul-arz—*Partition —Old* wajib ul-arz *copied* — Hissadaran deh, *meaning of.*—The pre emptive clause of a *wajib-ul-arz* gave right of pre-emption, first to co-sharers, who were relatives, secondly to, *hissadaran ek jaddi*, and thirdly to *hissadaran deh.* The village was partitioned into several *mahals.* After partition the same pre-emptive clause was retained in each of the *mahals* : *Held*, that the words *hissadaran deh* meant co-sharers in the village, and not in the *mahal.* KALLU v. AJUDHYA PERSHAD, **8 Ind. Cas. 527.**

(75)—*Pre-emption*— Wajib-ul-arz—*Construction*—Hissadar Karibi—*Nearness in blood or space.*—A *wajib-ul arz* contained three classes of pre-emptors : (1) *hissadar karibi*, (2) other *hissadaran* of the *thoke*, and (3) *hissadars* in other *thokes* The village was divided into *thokes* and the *thokes* were sub-divided into *khewats* : *Held*, that the words *hissadar karibi* meant nearness in space and not in blood. SURANJBALI v. NAKCHED TEWARI, **9 Ind. Cas. 276.** (1 A.L.J. 272, A.W.N. 1904, 104, 26 A. 544, 1 A.L.J. 705, A.W.N. 1903, 239, A.W.N. 1883, 206, A.W.N. 1895, 78, 2 A.L.J. 707, A.W.N. 1905, 192, *R.*)

Wajib-ul-arz—*continued.*

(76)—*Escheat, right of—Residence, change in, effect of—Mafrur, meaning of- Abandonment of residence, how far evidence of escheat.*—A landlord claimed possession of a grove on the ground that the grove-holder having taken up his residence in another village, the grove escheated to the landlord. The landlord claimed the right of escheat on the basis of an entry in the *wajib-ul-arz*, where it was provided that, if the tenant became *mafrur* or *farar ho jana*, the grove will become the property of the landlord : *Held*, that, in the absence of any evidence to the contrary, the provision of the *wajib-ul-arz* did not apply to the case of a person who had transferred his place of residence from one village to another, but had still retained and asserted his rights as a grove-holder. He can only be considered *mafrur* if his abandonment of the village is attended by circumstances which suggest an intention of complete abandonment of his residence and his rights in the grove. (2 O.C. 280, *F.*) It would be open to the persons interested in any particular case to prove by oral evidence that, although the custom set forth in the *wajib-ul arz* is limited by the use of such words as "*mafrur*" or "*farar ho jana*," yet, as a matter of fact, these words were used loosely and inaccurately, and that the custom actually prevailing recognizes the right of escheat against a grove-holder, whenever the latter has finally and completely transferred his residence outside the boundaries of the village in which the grove is situate. PARTAB SINGH v. CHANDRA BHUKAN, **12 Ind. Cas. 409.**

See ABSENTEE, 67 P.R. 1870.

See ACKNOWLEDGMENT, 2 Agra 227.

Entry in, that no co-sharer is competent to transfer—Effect— *See* ACT XXIII OF 1871, ss. 3, 4, 6, 8, 8 A.L.J. 692.

See C.P. ACT IX OF 1883, 5 C.P.L.R. 76, 5 C.P.L.R. 124.

See PUN. ACT XXVIII OF 1868, s. 2, 20 P. R. 1873, 3 P.R. 1888, Rev., 3 P.R. 1889, Rev.

See PUN. ACT XXVIII, OF 1868, ss. 2, 11, 1 P.R. 1880, 2 P.R. 1880, 36 P.R. 1880, 37 P. R. 1880, 42 P.R. 1881, 43 P.R. 1881.

Statement of custom in, cannot override s. 59, Tenancy Act—*See* PUN. ACT XVI OF 1887, ss. 59, 111, 112, 97 P.R. 1909.

See U.P. ACT XIX OF 1873, ss. 61, 65, 257, 2 A. 876, F.B.

Construction of—*See* U.P. ACT II OF 1901, s. 158, 6 A.L.J. 749=2 Ind. Cas. 985.

Clause regarding rights to alluvion—Interpretation of—*See* ALLUVION—LAND INUNDATED AND REFORMED, 125 P.R. 1889.

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Proof of custom not embodied in—*See* BURDEN OF PROOF—CUSTOM, 16 C.P.L.R. 81.

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See CUSTOM, 1 Agra 134, 135, 2 Agra 120. 3 Agra 75, 3 Agra 138, 20 C. 649=20 I.A 77, P.C., 4 O.C. 71, 8 O.C. 94.

See CUSTOMS—PUNJAB—GENERAL, 54 P. R. 1867, 33 P.R. 1869, 13 P.R. 1870, 55 P.R. 1871, 87 P.R. 1891, 8 P.R. 1892, 44 P.R. 1892, 52 P.R. 1896.

See CUSTOMS—PUNJAB—ALIENATION, 47 P.R. 1882, P.L.R. 1900, p. 145.

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See CUSTOMS—PUNJAB — INHERITANCE, 119 P.L.R. 1901=102 P.R. 1901.

See CUSTOMS—PUNJAB—PRE-EMPTION, 78 P.L.R. 1901=16 P.R. 1901, 93 P.L.R. 1905=70 P.R. 1905, 106 P.L.R. 1903=46 P.R. 1903, 85 P.L.R. 1901=11 P.R. 1901, 92 P.L.R. 1906, 139 P.L.R. 1903=65 P.R. 1903, 78 P.R. 1904, P.L.R. 1900, p. 182, 124 P.L.R. 1903, 172 P.L.R. 1903=64 P.R. 1903.

See DECLARATORY DECREE, SUIT FOR—MISCELLANEOUS, 7 A. 880, F.B.=A.W.N. 1885, 293.

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Zamindar's right of—Groves belonging to absconding tenants—*Bona Vacantia*, meaning of—*See* ESCHEAT, 1 O.C. 42.

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Groves planted by tenant—Right to cut and sell timber—*See* LANDLORD AND TENANT—PROPERTY IN TREES, ETC. ON LEASED PREMISES, 7 Ind. Cas. 212.

Tenant's right to cut down trees—Consent of the landlord—Refusal of the consent, grounds for—*See* LANDLORD AND TENANT — PROPERTY IN TREES, ETC. ON LEASED PREMISES, 2 P.R. 1908, Rev.

Landlord and tenant—Right of landlord in respect of building on village *abadi*—*See* LANDLORD AND TENANT, TRANSFER OF TENANT'S INTEREST, 27 A. 538=1 A.L.J. 673=A.W.N. 1904, 240.

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Admission of liability entered in—Acknowledgment—*See* LIMITATION ACT, 1908, s. 19, 5 Ind. Cas. 77.

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When, is in "possession" of goods—*See* PRINCIPAL AND AGENT—DUTIES AND LIABILITIES OF PRINCIPALS, 11 Bom. L. R. 926 =4 Ind. Cas. 652.

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(1)—*Warrant—Warrants made by Lieutenant Governor of Bengal—Seal of Court.*—The Court will order its seal to be impressed on any warrant made by the authority of the Lieutenant-Governor of Bengal, even if not actually signed by him. ANONYMOUS, **1 Ind. Jur. N. S. 106.**

(2)—*Warrant of arrest—Absence of warrant —Discharge from custody of Sheriff.*—The Court will discharge a prisoner from custody when the jailor holds no warrant for his detention, although he has been properly in the custody of the Sheriff. *In the matter of* SHAH SAHIB, **1 Ind. Jur. N. S. 19.**

(3)—*Warrant of arrest—Form of warrant—Sufficiency of warrant.*—Where a person had been taken in execution under a *ca. sa*, directed to the Sheriff under the old procedure, it was held to be sufficient to empower the jailor to detain him. The words "ordinary civil jurisdiction" are only used to distinguish the civil from the criminal jurisdiction. *In re* ANWAR BISWAS, **1 Ind. Jur. N. S. 106.**

(4)—*Warrant of arrest—Informality of warrant—Application for discharge—Civ. Pro. Code*, 1859, *s.* 273—*Delay in bringing up prisoner before Court.*—B. M. and several other prisoners in the custody of the Sheriff of Calcutta, for debt, without having been brought up to have an order for their allowance made, on being produced for that purpose by the Sheriff, applied for their discharge under s. 273 of Act VIII of 1859. Preliminary objections were taken to the validity of the warrants on which the Sheriff arrested them, on the grounds that the time for execution was not specified in them; and that, even had they been originally valid, their authority had expired, owing to the delay in bringing up the prisoners. Both objections were overruled. *Held* that a mere informality in a warrant, such as the omission of the time for execution, only renders it irregular, and does not invalidate it; that advantage having been taken of such irregularity to prejudice the prisoner, affords grounds for an application to the Court to set the warrant aside; and that a mere delay in bringing the prisoner before the Court after his arrest, if not for a considerable period, does not render his detention illegal. *In re* BHOLANAUTH MULLICK, **Bourke O.C. 96.**

(5)—*Warrant, illegal when?—St.* 11 *and* 12 *Vic. ch.* 21, *ss.* 50, 51.—If a warrant committing an insolvent includes, amongst the offences for which they have been committed, an offence not contained in s. 50, 11 and 12 Vic. ch. 21 but contained in s. 51, it is invalid. RASH BEHARI ROY v. BHUGWAN CHUNDER ROY, **17 C. 209.**

Warrant—*continued.*

(6)—*Civ. Pro. Code, ss.* 2, 251—*Arrest in execution of decree—Warrant initialled and not signed by proper officer.*—Where a warrant for the arrest of a judgment-debtor is in proper form in every other respect except that it is initialled instead of being signed by the officer concerned, it is none the less the duty of the officer to whom it is entrusted with it to execute it. And resistance to such execution would be an offence, and the defect, if any, in the warrant, would not afford any ground of private defence. QUEEN-EMPRESS v. JANKI PRASAD, **8 A. 293=A.W.N. 1886, 106.** [*R.*, 6 C.W.N. 845, 31 C. 424.]

(7)—*Warrant coming back unexecuted--Effect.*—The mere fact that a warrant was issued and came back unexecuted, could not be taken to establish that the proceedings for execution in pursuance of which it issued, was exhausted and thereby determined. JIT MAL v. JWALA PRASAD, **21 A. 155=19 A.W.N. 1899, 7.** [*R.*, 27 P.R. 1905=79 P.L.R. 1905; *D.*, 11 O.C. 57, 17 P.R. 1910.]

(8)—*Warrant of arrest—Procedure on warrant—Act* XII *of* 1867, *s.* 14.—When a prisoner was arrested by the Sheriff under a writ of *ca. sa.*, it was necessary to bring him before the Court without delay, under s. 14 of Act XII of 1867. *In re* RAMCOOMAR DUTT, **2 Ind. Jur. N.S. 340.**

(9)—*Warrant of arrest—Writ of Calcutta Small Cause Court, Form of—Act* XII *of* 1865—*Fixing subsistence money.*—A writ of the Calcutta Small Cause Court commanding its "Bailiff to take the body of A, and have him before the Court on the—day, of—to satisfy B in the sum of—debt and costs, ordered and decreed by the said Court on the—day of—to be paid to the said B with costs of execution, and by virtue thereof to take and convey the said A to the common jail of the said Court, there to be detained in safe custody for—weeks, or until he shall sooner perform the said order of the Court" is in point of form a sufficient warrant to the jailor to receive and detain A, notwithstanding Act XII of 1865. It was not necessary, in the case of commitment of debtor to prison by the Calcutta Court of Small Causes to bring him in the first instance before the Court, as under the provision of Act VIII of 1859, in order to have his subsistence-money fixed. *In the matter of* MEER NAWAB, **1 Ind. Jur. N.S. 315.**

(10)—*Jurisdiction—Sale of immoveable property—Warrant against moveable property—Act* X *of* 1859, *s.* 88.—A Collector has no jurisdiction to hold a sale of the immoveable property of the judgment-debtor, in a suit under Act X of 1859, while a warrant against his moveable property is in force. Where the return of a Nazir to such a warrant showing that no moveables are forthcoming is made within 60 days from the signing of the warrant, the Collector may, under s. 88, allow the decree-holder more time to point out further moveables belonging to his judgment-debtor. The original warrant

Warrant—*concluded.*

so extended remains in full force. SHEIK NABI BAX v. DIDAR BAX SHAH, **3 B.L.R.A.C. 10=11 W.R. 326.**

Whether warrant can be issued against a pleader who fails to appear in answer to a charge preferred against him under s. 14 of the Legal Practitioners' Act—*See* ACT XVIII OF 1879, s. 14, 3 M.L.T. 237=7 C.L.J. 333=18 M.L.J. 184.

Application for sale—To Calcutta S.C. Court—*See* LIMITATION ACT, 1908, ART. 182—STEP-IN-AID OF EXECUTION, 29 C. 580.

Appeal petition of prisoner in jail under civil warrant—Duty of Court—*See* PRISONER, 6 M.H.C. 38.

Criminal Procedure Code, ss. 88 and 89—Property of alleged absconding offender attached and sold under an illegal—*See* RIGHT OF SUIT—MISCELLANEOUS, A.W.N. 1904, 159.

Of attachment not signed by Judge, but by Munsarim—Irregularity—Invalidity of sale—Civ. Pro. Code, 1859, s. 222—*See* SALE—SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE, 7 A. 506, P.C.

See SPECIFIC RELIEF ACT, 1877, 1 Ind. Jur. N.S. 21=Bourke. O.C. 384.

Omission of Nazir to re-arrest judgment-debtor released—Nazir liable to plaintiff in damages for negligence—Civ. Pro. Code, (Act VIII of 1859) s. 28, time for payment of batta for maintenance of debtor in jail—*See* SUBSISTENCE MONEY, 4 B. 65.

Warrant of Arrest.

See ARREST.

See WARRANT.

(1)—*Warrant of arrest—Civil Court decree—Notification of contents of warrant—Lawful arrest.*—To make an arrest under a warrant issued in execution of a Civil Court decree valid, it may not be necessary to show the warrant to the person to be arrested, but it is the duty of the bailiff to acquaint the person with the contents of the warrant at the time he arrests him and that he was authorized to arrest him, and if the accused then wants to see the warrant it would be the duty of the bailiff to show it to him. When a warrant is not shown to the person arrested nor are the contents of the warrant notified to him, before or at the time of the arrest, there is no lawful arrest. *In the matter of* RAJANI KANTO PAL v. THE EMPEROR, **5 C.W.N. 843.**

(2)—*Warrant for arrest of judgment debtor, by whom to be signed—Civ. Pro. Code,* 1882, *s.* 251 (=*O.* XXI, *r.* 24, *present Code*)—*Civ. Pro. Code,* 1882, *ss.* 387, 644—*Signing by Judge, necessity—Warrant signed by sheristadar—Resistance to apprehension—S.* 225-*B, Penal Code—Authority of sheristadar to sign warrants—Presumption—S.* 114, *cl.* (*e*), *Evidence Act.*—

Warrant of Arrest—*concluded.*

Under s. 251. Civ. Pro. Code, a warrant of arrest, like any other warrant issued in execution of a decree, may be signed by the Judge himself, or by any other officer appointed in that behalf by Court. (8 A. 293, *R.*) Form No. 154, sch. IV, Civ. Pro. Code, 1882, as the provision for variation in s. 644, Civ. Pro. Code, shows, cannot be taken as implying a direction that a warrant for arrest, in particular, must be signed by the Judge himself. Where a warrant for arrest is signed by a sheristadar duly authorised to sign warrants, the judgment-debtor by resisting its execution commits an offence under s 225-B, Penal Code. From the mere fact that the warrant for the arrest of a judgment-debtor bore the signature of the sheristadar, it cannot be presumed, under s. 114, cl. (*e*), Indian Evidence Act, that the sheristadar had been duly appointed to sign warrants. Evidence of the fact of appointment is necessary. *Per Harington, J.*—S. 114. cl. (*e*), Evidence Act, authorises the presumption that a particular judicial or official act which has been performed regularly, but it does not authorise the presumption, without any evidence, that the act has been performed. THE DEPUTY LEGAL REMEMBRANCER v. MIR SARWARJAN, **6 C.W.N. 845.**

See CIV. PRO. CODE, 1908, O. XXI, rr. 4, 5, ss. 38, 39, 41 and 136, 2 B. 560.

See MALICIOUS PROSECUTION, 19 B. 485.

Warrant of Attachment.

See ATTACHMENT.

(1)—*Warrant of attachment of moveable property issued by Civil Court—Lawful warrant—Civ. Pro. Code,* 1882, *sch.* 4, *form No.* 136.—A warrant, issued by the Civil Court for the seizure of moveable property of the judgment-debtors, when it is general in its terms, and does not authorise the seizure of the goods of the judgment-debtors, nor does it purport to give the peon authority to enter into the house of the judgment-debtors for the purpose of attaching their property, is not a warrant which can be legally executed, against the judgment-debtors. UMA CHARAN SINGH v. EMPEROR, **29 C. 244=6 C. W. N. 164.**

Warrant of Attorney.

(1)—*Warrant of attorney—Limitation Act,* 1859—*Entering up judgment.*—The statute of Limitation is no answer to a rule *nisi* to enter up judgment on a warrant of attorney. SOOJAN MULL v. HYDER JUNG BAHADUR, **1 Ind. Jur. O. S. 58.**

(2)—*Warrant of attorney—Extent and operation of warrant—Civ. Pro. Code,* 1859, *ss.* 17 *and* 49—*Acceptance of service and appearance—Act* XX *of* 1862, *s.* 7.—A warrant of attorney to the attorney of a defendant to receive a declaration or plaint, etc., in any action or suit to be brought for the recovery of certain moneys, and to confess the same action or suit, or else to suffer or consent to a

Warrant of Attorney—*concluded.*

judgment or decree in the said action or suit by default, or in any other way to pass or be pronounced against the defendant, the empowered attorney to accept service and appear for the defendant within the meaning of ss. 17 and 49 of Act VIII of 1859. *Held* that s. 7 of Act XX of 1862 referred only to warrants of attorney for the entering up of judgments in the High Court which were in existence before the 1st July 1862. KHALUT CHUNDER GHOSE v. SARODASOONDERY DOSSEE, **Bourke O. C. 244.**

Warrant of Execution.

(1)—*Jurisdiction—Sale of immoveable property—Warrant against moveable property—Act* X *of* 1859, *s.* 88.—A Collector has nojurisdiction to hold a sale of the immoveable property of the judgment-debtor, in a suit under Act X of 1859, while a warrant against his moveable property is in force. Where the return of a Nazir to such a warrant showing that no moveables are forthcoming is made within 60 days from the signing of the warrant, the Collector may, under s. 88 allow the decree-holder more time to point out further moveables belonging to his judgment-debtor. The original warrant so extended remains in full force. SHEIK NABI BAX v. DIDAR BAX SHAH, **3 B. L. R. A. C. 10=11 W. R. 326.**

Warranty.

(1)—*Sale of a horse—Breach of warranty—Suit for price.*—In a suit by the plaintiff to recover the price of a horse sold to the defendant, it was proved in evidence that the latter took out the horse on inspection but found it lame of one foot and he wanted to return it; but the plaintiff feared that this would affect the sale of other horses and desired the defendant to keep the horse in his own stable where it was looked after by the plaintiff's servant. The horse subsequently died of a disease in the lungs. *Held* that in these circumstances the doctrine of *caveat emptor* does not apply as para 8 of s. 13 of the Punjab Civil Code lays down that freedom from concealed defects is implied in every contract of sale. In a suit to recover the price of articles sold the defendant can plead as a defence the breach of warranty in reduction of damages and the sum awarded will be diminished in value to the extent of non-compliance with the warranty. CHIRAGH SHAH v. MAHOMED SOOLTAN, **62 P. R. 1866.**

Breach of—Contract—*See* CONTRACT—BREACH OF CONTRACT, 14 B.L.R. 180=23 W.R. 136.

Agreement to sell "the entire stock at Shalimar Depot or 700—800. say seven to eight hundred tons of coal"—Words of description and not of estimation—*See* CONTRACT—BREACH OF CONTRACT, 37 C. 334=6 Ind. Cas. 924.

What amounts to breach of—*See* CONTRACT—BREACH OF CONTRACT, 8 M.L.T. 181=7 Ind. Cas. 226.

Warranty—*concluded.*

See DAMAGES—DAMAGES, SUIT FOR, 29 C. 323=6 C.W.N. 495.

In case of fire insurance—Breach of—Effect—Distinction between, and mere representation—*See* INSURANCE, 6 N.L.R. 89=6 Ind. Cas. 933.

Conditions denoted by the term—Effect of not fulfilling—*Onus* of proof—*See* MARINE INSURANCE, 13 C.W.N. 425=36 C. 516=2 Ind. Cas. 573.

Of title—Breach of—Rights of buyer—Measure of damages—*See* SALE—GENERAL, 8 M.L.T. 216=7 Ind. Cas. 757.

Warranty, Breach of.

(1)—*Breach of warranty—Damages—Examination of bulk.*—In cases of breach of warranty of quality, *prima facie* the measure of damages is the difference between the value of goods at the time of delivery to the buyer and the value they would have had, if they had answered the warranty. There may be cases in which the Court would be justified in drawing an inference as to the quality of the bulk from the quality of a sample, as for example, in a case in which the plaintiff had no opportunity for examining and testing the bulk. But the Court would not condemn the bulk of a large consignment of goods as of inferior quality on proof of inferiority of the sample, when the buyer had an opportunity for examining the bulk but adduces, no evidence to prove its quality. During the examination of a certain number of bales of goods taken as a sample, the whole quantity in each bale should be examined, the examination of only a portion of the same not being proper. BOISOGOMOFF v. NAHAPIET JUTE CO., 29 C. 587.

Warranty of Title.

Execution of sale of moveable property—Warranty as to title—Remedy of execution-creditor if title defective—Sheriff's liability—*See* SALE—SALE IN EXECUTION OF DECREE—RIGHT OF PURCHASER ON SETTING ASIDE SALE, 2 B. 258.

See SALE—SALE IN EXECUTION OF DECREE—RIGHT OF PURCHASER ON SETTING ASIDE SALE, 17 M. 228=3 M.L.J. 293, 2 A. 780.

See SALE—SALE IN EXECUTION OF DECREE—MISCELLANEOUS, 2 A. 828.

Contract of sale—Right to demand warrant of title—*See* SPECIFIC PERFORMANCE, 9 A. 705, P.C.=14 I.A. 173.

Washerman.

Not returning articles made over to him—Right to set off value of articles against his wages—*See* SET-OFF, 77 P.R. 1910=108 P.W.R. 1910=145 P.L.R. 1910.

Wasika Allowance.

(1)—*Whether a pension or not—Pension money after its payment to the pensioner, character of—Order directing insolvent to pay every month a portion of the pension money to the Receiver, validity of—Liability of pensioner to account to the Receiver for money received as pension—Provincial Insolvency Act* (III *of* 1907), *s.* 16, *sub-ss.* (2) (*a*) *and* (4)—*Civ. Pro. Code* (*Act* V *of* 1908), *s.* 60 (*g*)—*Act* XXIII *of* 1871, *ss.* 4 *and* 11—*Construction of Statute.*—A *wasika allowance* guaranteed by the British Government under the treaty, dated 17th August, 1825, between the King of Oudh and the British Government is a political pension within the meaning of s. 60 (*g*) of Act V of 1908 and is also to be deemed a pension within the meaning of that term as used in ss. 4 and 11 of Act XXIII of 1871. Such *wasika allowance* does not vest in the Receiver under sub-s. (2) (*a*) of s. 16 of Act III of 1907. The after-acquired property of the insolvent, which vests in the Receiver under sub section (4) of section 16 of Act III of 1907 is subject to the same exceptions and is of the same class as property covered by sub-s. (2) of that section. Once the money due on account of a pension is paid to the pensioner and allowed to blend with his other property, it no longer retains its character as pension and it is subject to all incidents to which the property with which it is blended is subject. But the money paid on account of such pension does not vest forthwith in the Court of Receiver under sub-s. (4) of s. 16. The pensioner must be allowed to receive the money and also allowed an opportunity, at his choice (1) of mixing it up and blending it with his other property or (2) of spending it for the purposes for which it was granted to him, *viz.*, to maintain and support himself in a manner suitable to his position in life. *Held*, that therefore an order directing the insolvent every month to deliver to the Receiver a portion of the money received by him on account of the pension is bad in law and cannot be sustained. *Held*, further, that the pensioner cannot be called upon to account for the money received by him as pension, though the Receiver can claim to take possession of any money or other property actually in the hands or possession of the insolvent. To carry out effectually the object of a statute it must be so construed as to defeat all attempts to do or avoid in an indirect or circuitous manner that which it has prohibited or enjoined. DEBI PRASAD v. NAWAB AMIR ALI KHAN, 12 O.C. 323=4 Ind. Cas. 145.

Wasilat.

See DAMAGES—MISCELLANEOUS, 26 C. 356=3 C.W.N. 279.

Wasil-baki-Papers.

(1)—*Act* II *of* 1855, *s.* 43—*Admissibility of jumma wasil-baki papers as corroborative evidence—Insufficiency of such evidence to rebut presump-*

Wasil-baki Papers—*concluded.*

tion under s. 4 of Act X of 1859.—Jumma-wasil-baki papers ought not to be regarded as anything else than "books proved to have been regularly kept in the course of business," and these books are admissible as *corroborative* but not as *independent* proof of the facts stated therein. In the absence, however, of any independent proof adduced by the plaintiff of what he should prove in order to rebut the presumption arising in favour of the defendant under s. 4 of Act X of 1859, the *baki* papers cannot by themselves, have the effect of depriving the defendant of the benefit of such presumption. RAM LALL CHUCKERBUTTY v. TARA SOONDARI BURMONYA, **8 W.R. 280.** [*D.*, 22 W.R. 549.]

Waste.

(1)—*Devastation by husband—Suit against widow individually—Defendant in the suit not to be decreed to be answerable out of her husband's estate for such devastation.*—This suit was commenced against the defendant widow individually, and not in her representative capacity, to recover plaintiff's share of property alleged to be in her possession, the defendant having been charged with devastation in respect of such property alone. The defendant contended that she was not liable in the present suit to be made answerable out of her husband's estates for any devastation which he may have committed, the suit being one in which she was charged merely in respect of property alleged to have come into her own possession. *Held* that the objection must prevail and that the widow could not under the circumstances be made answerable out of her husband's estates. MR. E. STAVES v. EULALIA DIAS, **10 W. R. 414.**

See CHAMPERTY, 4 B.L.R.O.C. 1=12 W.R. O.C. 13.

See HINDU LAW—ALIENATION, 5 B.L.R. 508, 7 B.L.R. 131.

Hindu Law—Reversioners—Powers of reversioners to restrain waste and set aside alienations—*See* HINDU LAW—REVERSIONERS, 1 Agra 1.

Suit by presumptive reversionary heirs to set aside Hindu widow's alienations and to restrain her from committing—*See* HINDU LAW—REVERSIONERS, 6 C. 198=6 C.L.R. 588.

See HINDU LAW—REVERSIONERS, 24 W.R. 86.

See HINDU LAW—WIDOW, B.L.R. Sup. Vol. 48=W.R. F.B. 165.

Wilful waste—Forfeiture of kanom—Refund of kanom amount—*See* LANDLORD AND TENANT—FORFEITURE, 9 M.L.J. 306.

Position and powers of Stant — Waste—Destruction of inheritante—*See* MALABAR LAW—GENERAL, 7 M.L.J. 317.

See MORTGAGE — ACCOUNTS BETWEEN MORTGAGOR AND MORTGAGEE, 10 M. 367.

Waste—*concluded.*

By mortgagee—*See* MORTGAGE—ACCOUNTS BETWEEN MORTGAGOR AND MORTGAGEE, 15 M. 290.

Or misappropriation of property—*See* RECEIVER, 18 M. 23.

Land brought under cultivation — Shikmi cultivation—*See* RIGHT OF OCCUPANCY—ACQUISITION OF RIGHT, 1 Agra Rev. 32.

Waste Lands.

(1)—*Rights of pasturage in zamindari waste lands—Right of zamindar to reclaim.*—Where the village *wajib-ul-arz* provided only that the village cattle may graze on waste land, in the same manner as they were in the habit of grazing all along, but contained no understanding or covenant by the zamindar owner of the village not to reclaim or bring under cultivation any land which then was waste land, the mere permission to the villagers to exercise the customary right of pasture over the waste lands cannot take away from the zamindar the power to reclaim such waste lands for cultivation. RAM SARAN SINGH v. BIRJU SINGH, **19 A. 172=A.W.N. 1897. 35.** [*R.*, 31 C. 503, P.C.=8 C.W.N. 425=14 M.L.J. 152=31 I.A. 75.]

(2)—*Waste land—Zamindari tract—No visible sign of occupation—Possession.*—Where in a zamindari tract, there is no visible sign of occupation of waste land, possession thereof, in the absence of evidence to the contrary, will be considered to be with the zamindar, as possession must be taken to go with the right which is *prima facie* in the zamindar. WOODWANT MAHTOON v. HUNOOMAN PERSHAD SINGH, **22 W.R. 419.**

(3)—*Possession of waste lands— Presumption in case of doubt—Limitation.*—A person may be in such possession of waste lands as would protect his suit relating to them, from being barred by limitation ; where the question of possession is doubtful, a presumption will arise in favour of the party who proves his right. MAHOMED BASSIR v. KUREEM BUKSH, **11 W.R. 267.** (3 W.R. 80, *R.*) [*F.*, 22 W.R. 405.]

(4)—*Uncultivated land—Title to—Limitation—Nature of adverse possession.*—The title of a person to uncultivated or jungle land may be barred in the same manner and to the same extent as in the case of cultivated land, where adverse possession for a sufficiently long time is proved against him. The evidence of possession to operate as barring the title, would be the exercise of such acts of ownership as would ordinarily be exercised over property of that nature. MITTERJEET SINGH v. RADHA PERSHAD SINGH, **23 W.R. 368.** [*R.*, 5 C.L.R. 481.]

(5)—*Jungle waste lands, not incapable of possession—Plea of limitation by adverse possession—Plaintiff's cause of action, commencement of.*—On remand by the High Court for

Waste Lands—*continued.*

trying the point of limitation, the Sudder ameen found that the land in dispute had been lying waste for 40 or 50 years and had not been in the possession of the plaintiff, and his suit was therefore barred. The High Court was of opinion that the above conclusion was not warranted upon the finding, because though the land may be a jungle it may still have been in the possession of some one. As a fact, however, the jungle in this case was not in the possession of either the plaintiff or defendant as ascertained and reported by the local amin. Plaintiff was thus not barred by any adverse possession; and inasmuch as, until there was adverse possession, there was no cause of action, the suit would not be barred unless it was instituted beyond twelve years from the date when adverse possession was taken, and, since it was clear that no acts of ownership were exercised by either party in respect to the land, the subject of this litigation, until a very recent period preceding the institution of this suit, there was no ground for holding that the plaintiff's remedy was lost by his failure to sue within twelve years from the date of his cause of action. ESHAN CHUNDER RAI v. KALI COOMAR RAI, **2 W.R. 135.**

(6)—*Judgment in former suit to which defendant was no party, not admissible in evidence in subsequent suit—Land lying waste, no inference possible from, regarding possession.*—In this suit to recover lands, the Court of first instance found that the plea of limitation raised by the defendant was made out by the facts of the case. The lower appellate Court reversed this finding basing its conclusion on a judgment passed in some suit brought against the present plaintiff in 1865, to which the present defendant was in no way a party, but mainly supporting it by the argument that the land was lying waste up to 1221, and, therefore, could not be in the possession of any one. The High Court observed that the previous judgment could be no evidence as between the present parties, and even if otherwise, its terms were not such as to justify the inference which the lower appellate Court drew from it. The fact that the land was lying waste, did not of itself show that no one was in possession. MAHOMED ALI v. SHURUM ALI, **8 W.R. 422.** [*R.*, 12 A. 1, F.B.]

(7)—*Cause of action—Act* XXIII *of* 1863, *s.* 5 *—Suit to contest sale—Failure to give notice—Limitation.*—Where the Collector failed to comply with the law by giving notice to the plaintiff of his intention to dispose of the estates, he could not equitably plead that the plaintiff had not contested the sale within the period prescribed by s. 5 of Act XXIII of 1863. RAI KIMMUT SINGH v. THE COLLECTOR OF BIJNOUR, **2 Agra 258.**

(8)—*Regs.* II *of* 1819, *and* III *of* 1828, *lands resumed under, suit for possession of*—Onus *of proving application for and refusal of settlement —Patta granting waste lands within specified boundaries—Right of grantee to all lands within boundaries.*—This was a suit for possession of two chucks of lands stated to be within the talukdaree potta of the plaintiff as conferred on him by Government in 1805. It was argued on behalf of the plaintiff that the laws under which the chucks had been resumed, Regs. II of 1819 and III of 1828, contemplated assessment and not ejectment; and that the latter, and not the former process, had been followed, and the High Court was of opinion that the plaintiff should have applied for the settlement of the chucks in dispute and met with a refusal; but there was nothing to show that the plaintiff had done so. The grant of puttah was not disputed and there was no allegation that any boundaries had been inserted therein or changed. Although it might be possible that the Collector did not know the actual extent of the area which he was giving away, since land within specified boundaries had been granted on pottah, the Court would be bound to award the grantee all the lands situated within such boundaries so far as they can be fixed and identified. KHAJA ABDOOL GUNNY v. THE COMMISSIONER OF THE SUNDERBANDS, **2 W.R. 239.**

(9)—*Waste land, unassessed—Right of pasture against Government—Prescriptive title—Darkastdars whether entitled to possession.*—Where the plaintiffs were granted certain unassessed lands in Darkhast, and the defendant obstructed the plaintiffs and set up an immemorial right of pasture and denied the right of Government to grant the lands on Darkhast, *held* that a right of pasture does not exclude the owner's right to the possession and enjoyment of the property over which such right may exist. (19 A. 172; *R.*) *Quære.*—Whether, in the case of Government waste, where the owner has no use for the property and is not present on the spot to resist any acts of trifling enjoyment on the part of another the mere pasturing of cattle by the adjoining ryot would amount to an enjoyment as of right so as to create a prescriptive title. VENKATAPPA NAIDU v. VALLUR VERIAH, **7 M.L.T. 380.** (31 C. 405, *R.*)

(10)—*Act* XXIII *of* 1863, *purchaser of waste land sold under, rights of—Remedy for claimant—Suit under s.* 18 *for compensation.*—Plaintiff claimed a pottah of certain lands within a tract sold to the defendant by Government as waste lands. The Deputy Collector dismissed the suit and the dismissal was affirmed by the Judge on appeal upon the ground that, under the provisions of Act XXIII of 1863, the defendant, having purchased the land absolutely, did not hold it subject to any claim, such as that preferred by the plaintiff. The objector or claimant coming in due time, as provided by s. 1 may stay a sale, but if he did not come within such time, and allowed the land to be sold, then he could only lay claim to compensation under the Act, making the Collector a defendant, and he would then recover, not the land, but compensation from Government through the Collector or other officer. Plaintiff in the present suit having thus misconceived his remedy, his

Waste Lands—*continued.*

suit was properly dismissed by both the lower Courts. MAGUN POLLAN v. MONEY, **7 W.R. 473.** [*Expl.*, 12 C. 279.]

(11)—*Waste common land—Appropriation to separate use of one co-sharer — Consent of sharers.*—Waste common land in which all the co-sharers have a joint ownership cannot, without the consent of all, be withdrawn from the common stock and be permanently appropriated to the separate use of one. DIROPAUL RAI v. BHONDO RAI, **2 Agra 341.**

(12)—*Waste lands—Exclusive right claimed by some of the Khewatdars.*—The parties to the suit were Khewatdars of a mehal. The plaintiffs claimed the waste lands of the mehal as exclusively belonging to them. The defendants contended that they were common. At the settlement, these lands were recorded as being enjoyed in common. Plaintiffs were the descendants of the original founder of the chief village and were the owners of the village site of the principal village. *Held*, that this circumstance alone could not support the plaintiffs' claim to the whole of the waste lands to the exclusion of the defendants. KAEM SHAH v. MOHUMDA, **64 P.R. 1868.**

(13)—*Use of, as a grazing-ground, title to—Incompetency of a Civil Court to make allotment of land as a grazing ground—Grazing-ground.*—Mere use of a piece of waste land as a grazing-ground for a few years does not confer on the person who uses it a right to do so or to eject therefrom another person who has taken possession. A Civil Court cannot make an allotment of land as a grazing-ground under Rule 76 of the rules under the Land and Revenue Act. NGA PAN BU v. NGA SHWE THE, **L.B.R. 1872—1892, 603.**

(14)—*Title to adjoining as opposed to a grant thereof—Land and Revenue Act and Rules.*—It may be usual to allot waste land to the adjoining owner, but there is no section of the Land and Revenue Act, or of the rules made thereunder, giving him a right of allotment. A cultivator has no legal claim which can be recognized by a Civil Court to be allotted land adjoining his holding If a circle thugyi acts improperly and in defiance of prevailing usage in allotting such land to another person, it is only by petitioning the superior revenue authorities that the occupant of the adjoining holding can obtain a grant. MAUNG PO HLA v. MAUNG SIN, **L.B.R. 1872—1892, 599.**

(15)—*Grant — Non-mirasi waste land — Power of Collector to make grant—Right of former occupant.*—Where land situated in a non-mirasi district is allowed by the pattadar to lie waste, the Collector is competent to make a grant of it to another. Such grantee cannot be ousted by the former occupant. GENGU REDDI v. ASAL REDDI, **1 M.H.C. 12.** [*Cons.*, 7 M.H.C. 98; *R.*, 2 M.H.C. 1, 4 M.H.C. 108, 2 B. 19, 1 M. 205.]

(16)—*Unsettled and unoccupied waste land not belonging to private owner.*—Unsettled and unoccupied waste land, not being the property of any private owner must be held to belong to the State. This view is not opposed to the policy of British Government in India, and is in accordance with such policy as appears from the express language of the preamble of Reg. III of 1828. PROSUNNO COOMAR ROY v. THE SECRETARY OF STATE FOR INDIA IN COUNCIL, **26 C. 792=3 C.W.N. 695.** [*F.*, 13 C.W.N. 235=9 C.L.J. 265; *R.*, 8 C.L.J. 470, 11 C.W.N. 928.]

(17)—*Suit to establish right to grant of puttah of waste lands—Preferential right to occupancy.*—In a suit by A and others, as the mirasidars of a village, to establish their right to the grant of a puttah in respect of certain waste lands of the village as against B and others to whom the said lands had been granted, where the Collector, who was also made a defendant, stated that the Hookumnamah Rules of the district directed that the lands should be given to mirasdars on their tendering sufficient security, and that A and others had, on previous occasions, received lands for which offers had been made by others, in consideration of their (A and others) preferential right, but that they had failed to cultivate the lands or pay the assessment in breach of their agreements, *held* that A and others were entitled to the relief sought for. KULLAPPA NAICK v. RAMANUJA CHARYAR, **4 M.H.C. 429.** [*F.*, 12 M. 404 12 M.L.J. 453=26 M. 268.]

(18)—*Time for instituting suit under s. 5, Act XXIII of 1863, (not extendible)* Vakalutnamah (Effect of filing). TARANATH DUTT v. THE COLLECTOR OF SYLHET, **5 W.R. Waste Land Court Reference, 1.**

Purchaser or lessee of—Under Government, title of—*See* ACT XXIII OF 1863, 12 C. 279.

Alienation by Government of immemorial—Shrotriemdars—Acquisition of such lands by Government—Respective rights of Shrotriemdars and Mirasidars to compensation money—*See* ACT I OF 1894, s. 30, 26 M. 371.

See C P. ACT XVII OF 1889, s. 42, 7 C.P.L.R. 101.

Waste and jungle land—Disputed boundary—*Onus* of proof—*See* BOUNDARIES, 7 Ind. Cas. 165.

Sanction by Zemindar to use of waste land for religious purposes—Erection of Chabutra on land—Suit for removal—*See* BUILDING, A.W.N. 1885, 325.

See BURDEN OF PROOF—POSSESSION AND PROOF OF TITLE, U. B. R. 1892—1896, Vol. II, 224.

See BURDEN OF PROOF—MISCELLANEOUS, 105, P. R. 1901.

See COMMON LAND, 105 P. R. 1901.

Common to all sharers—Enjoyment and use by one co-sharer—*See* CO SHARERS—ENJOYMENT OF PROPERTY BY CO-SHARERS, **1 Agra 12, 2 Agra 341.**

Waste Lands—*concluded.*

Right to—Adverse possession—*Onus* of proof —*See* CROWN, 7 M.L.T. 128.

See JURISDICTION OF CIVIL COURTS, 18 M. 434.

Free grazing lands set apart by Government for village cattle—Disposal of part of such lands by Government—Extent of right of pasturage in Government—Relative rights of villagers and of Government, how far within Civil Court's jurisdiction—*See* JURISDICTION OF CIVIL COURTS, 21 B. 684.

Patta—Rights of mirasdars—*See* LANDLORD AND TENANT—MIRASDARS, 1 M. 205, F.B.

See PARTITION—FORM OF PARTITION, 1 P.R. 1873, Rev.

See PARTITION—MISCELLANEOUS, 128 P. L. R. 1904.

See POSSESSION—NATURE OF POSSESSION, 31 C. 397.

Possession of—Presumption as to—*See* POSSESSION—NATURE OF POSSESSION, 1 Ind. Cas. 252.

Presumption as to possession of—*See* RES JUDICATA—MISCELLANEOUS, 9 O.C. 32.

Mad. Act II of 1864, ss. 1, 39, 42—Rights of jenmi in Malabar—Grant of—Cowle—Patta—Sale for arrears—*See* SALE—SALE FOR ARREARS OF REVENUE AND CESS—PURCHASERS, RIGHTS AND LIABILITIES OF, 13 M. 89.

Right of inferior proprietors over village forest and—*See* SETTLEMENT—EFFECT OF SETTLEMENT, 2 C.P.L.R. 25.

Ryotwari lands—Nature of right possessed by ryot in his lands—Right of Government to grant to other ryots lands allowed to lie waste. —*See* SETTLEMENT—SUBJECTS OF SETTLEMENT, 1 M.H.C. 407.

Grant of—Delegation of power by Governor in Council to make grants under dharkast rules—Binding character of grant so made—Power of Civil Court to determine validity of grant—Revision of grant properly made—*See* ST. 22 AND 23, VIC. 41, 26 M. 268=12 M.L.J. 453.

Possession, presumption of, from evidence of title—*See* TITLE, 5 C.L.R. 481.

Right of adjacent owners to restrain each other from planting trees on land between them—*See* TREES, 15 C.P.L.R. 93.

Waste-lands claims.

See ACT XXIII OF 1863.

Waste-land Rules.

This circular deals with the alteration in Waste Land Rules, and substitution of new form of Table III, Return XLV, for that at page 24 of those Rules. **Rev. Cir. No. 2, 23 W. R. Rev. Cir. p. 35.**

Watan.

See VATAN.

Watandars.

See VATANDARS.

Water.

See PRESUMPTION—EASEMENTS—WATER, RIGHTS CONCERNING—*See* RIGHT TO USE OF WATER.

(1)—*Surplus water of tank—Channel—Easement.*—A right of easement may be acquired in the surplus water of a tank flowing through a defined channel, whether natural or artificial, RAYAPPAN v. VIRABHADRA, **7 M 530.** [*R.*, 14 C.P.L.R. 145, 11 C.W.N 85=4 C.L.J. 370.]

(2)—*Custom—Customary right to use a tank for bathing, washing and taking water, whether involves a general right of access.*—The existence of a customary right to use a tank, for the purpose of bathing and washing and taking water therefrom, does not necessarily involve a general right of access to the tank. The customary right may be limited to access by a particular side. MUHAMAD HUSAIN ROWTHER v. MUHAMDD ABUBAKAR ROWTHER, **2 Ind. Cas. 427=20 M.L.J. 699=8 M.L.T. 399.**

(3)—*Water in Government channels—Right to distribute water.*—Government has a right to distribute water in Government channels, without prejudice to the rights of ryotwari holders which they have acquired for the necessary cultivation of their lands. KRISTNA ROW v. KUPPIER, **8 M.L.T. 268.**

(4)—*Water, Right of—Government, duty of, to maintain irrigation works in repair—Deficiency of water supply owing to non-repair—Loss to ryot in consequence—Whether suit lies against Government therefor—Position of Zemindar and Government.*—The Government is not under an obligation, with regard to each individual ryot, to repair irrigation works whenever they require repair. A ryot is entitled to prevent Government from doing any act resulting in a material diminution of the usual supply of water for irrigation to his land, but no action will lie for mere failure to repair, when repair is required to enable the ryot to receive the usual supply. *Obiter.*—It may well be that the Government, when handing over large tracts of the country to Zemindars at the permanent Settlement, laid upon them an obligation to preserve and repair the irrigation works handed over to them; consequently there may lie on the Zemindar an obligation more onerous than any that is upon Government, and what is discretionary upon Government has been made by the Government obligatory in the case of the Zemindar. The Zemindar's position is like that of a person or corporation on whom statutory powers are conferred and statutory duties are imposed. It has never been held that a person, bound by reason of his tenure to keep away in repair, is liable to an action by individuals injured by his failure to do so while as regards persons and corporations on whom statutory powers have been conferred and statutory duties imposed, the rule derivable seems

Water—*continued.*

to be that in the absence of a law liability as regards individuals, no such liability arises in cases of non-feasance merely because the statute imposes a duty; the statute must impose the liability as well expressly or by clear implication. The extent of the public duty which lies on the Zemindar is to be ascertained on the analogy of public duties cast upon persons or corporations by reason of tenure or by statute. The rights and obligations of Government in the matter of irrigation works in this country have to be ascertained from unrecorded custom and practice (28 M. 72, *F. & Expl.*), and there is no custom or practice recorded or unrecorded, in this Presidency, under which a ryot receives compensation from the State or a Zemindar, measured by the value of the crop lost, owing to defects in the irrigation works which command his land. Much inconvenience would be caused, if every person injured by non-feasance on the part of a body or a person entrusted with a public duty, were entitled to come into Court with a demand for compensation for his own particular grievance. Nor can the Government be held liable on the basis of a contract, as the Government is not bound by a contract with the plaintiff to maintain a supply of water for the irrigation of his land. THE SECRETARY OF STATE FOR INDIA IN COUNCIL v. MUTHUVEERAMA REDDI, **7 M.L.T. 397=6 Ind. Cas. 731=20 M.L.J. 869.** (24 M. 36, *N.F.*; 16 M. 333, 7 M.H.C. 60, 28 M. 72, *R.*)

(5)— *Water-supply — Tanks adjoining — Surplus water—Uninterrupted flow—Diversion —Replacing dam of turfs by Masonry weir—Diminution of water—Injunction.*—A and B were tanks in adjoining villages. The surplus water of tank A used to flow through a channel taking off from its southern bund to tank B, whose chief source of supply was this channel. The proprietor of tank A replaced an old turf bund across the channel by a masonry weir built so high as to intercept the water-supply to B and made two cuts in the bund of A so as to diminish the said supply of water. It was contended on behalf of the proprietor of A that she has not exceeded her right in putting up the masonry weir. *Held*, that the *onus* lay on the proprietor to show that she has not exceeded her right by such construction. A person who has the right to put up a dam of turf and loose stones is not necessarily entitled to substitute a tighter and stronger dam. BAKTHAVATHSLAMMAL v. THE SECRETARY OF STATE FOR INDIA IN COUNCIL, **9 M.L.T. 375=9 Ind. Cas. 636.**

(6)— *Water — Surface water, Right to appropriate—Water-course previously supplied —Obstruction — Right to natural flow.*—A landowner has a right to appropriate surface water, which flows over his land in no definite channel, although the water is thereby prevented from reaching a water-course which it previously supplied. RAJA INDERJIT PERTAP

Water—*continued.*

BAHADUR SHAI v. MOHUNT KRISHNA DYAL GIR, **6 Ind. Cas. 277=14 C.W.N. 825=12 C.L.J. 579.**

(7)—*"Full water rate," meaning of the term —"Full" what it means.*—The term "Full water rate" in rule 2 means full water rate in respect of wet cultivation, and not full water rate in respect of the crop actually raised, wet or dry as the case may be. "Full" means something different from "whole." THE SECRETARY OF STATE FOR INDIA IN COUNCIL v. M.K. SUBBA ROW, **8 M.L.T. 53 =7 Ind. Cas. 266.**

See ACT I OF 1868, s. 2, 11 P.R. 1898.

Interference with the right to flow of water to land, by Railway company—*See* ACT IX OF 1890, ss. 7, 10, 11, 25 M. 632.

Leakage of — Water-course — Water-cess—Powers of irrigation Department—*See* BOM. ACT VII OF 1879, s. 48, 23 B. 761.

Levy of—Statutory powers—Delegation — Validity—*See* MAD. ACT VII OF 1865, s. 1, 8 M.L.T. 171=7 Ind. Cas. 402.

Natural stream—Claim to uninterrupted flow of—Forest settlement officer—Jurisdiction—*See* MAD. ACT V OF 1882, ss. 10, 11, 20 M. 279.

Surplus water of tank—*See* EASEMENT, 7 M. 530.

In a natural stream—Riparian owners, rights and duties of—*See* EASEMENT, 3 L B.R. 23.

See EASEMENT, 49 P.R. 1888.

Natural channel—Flow of water—Duty of owner of land through which it flows—*See* EASEMENT, 8 A.L.J. 640.

Right to divert—through the defendant's land acquired by prescription—*See* EASEMENT, 30 C. 1077.

Prescriptive right to use—Injunction—*See* EASEMENT, 30 C. 281.

Easement to discharge water over another's land—Right of servient owner to claim continuance of flow—*See* EASEMENT, 14 C. P. L. R. 145.

Easement for watering mulberry land—Right to irrigate other crops—*See* EASEMENT, 7 Ind. Cas. 813.

Easements—Right to water whenever water was sold to the owner of the servient tenement by Government—*See* EASEMENTS ACT, 1882, s. 1, 4 M.L.T. 414.

Flowing in a river, rights of riparian proprietors to—*See* EASEMENTS ACT, 1882, s. 7, ill. (*i*), 7 Bom. L.R. 265=29 B. 357.

Right of—Natural streams and artificial channels—Rights of Government for purposes of irrigation—Riparian owners—Rights *inter se* —Suit against Government—Proof of damage when necessary—*See* GOVERNMENT, 5 M.L.T. 149=19 M.L.J. 131=32 M. 141=2 Ind. Cas. 325.

Water—*concluded.*

Right to flow of—Erecting a dam—Continuing wrong injunction—*See* LIMITATION ACT, 1908, s. 23, arts. 120, 144, 3 S.L.R 228, F.B. =6 Ind. Cas. 881.

Water flowing in undefined water-course—Right of adjacent owners *inter se*—*See* NATURAL RIGHTS, 7 M.L.T. 164=5 Ind. Cas. 921.

Right to let the water run off from land on a higher level into that on a lower level—Injunction—*See* NATURAL RIGHTS, 8 Ind. Cas. 456.

Water-cess.

See MAD. ACT VII OF 1865, s. 1, 12 M. 407.

Tenant—Extra-water taken from landlord's tank—*See* MAD. ACT VIII OF 1865, 10 M. 282.

Payment by landholder—Right of landholder to be re-imbursed—*See* SMALL CAUSE COURT, MOFUSSIL—JURISDICTION OF—GENERAL, 8 M. 4.

Burden of proof—Supply of water through Government source—Second crop cultivation—Liability of Zemindar to pay—*See* WATER RIGHTS, 14 M.L.J. 350.

Water-course.

(1)—*Water-course—Natural stream—Riparian proprietors—Rights inter se of upper and lower riparian propritors.*—A water course which has its origin in a spring, the water from which first falls into a pit, percolates underground and then flows underground for some short distance in a natural and known course until it reappears and flows on the surface, is a natural stream. An upper riparian proprietor cannot, by putting up a dam at a point in the stream where his lands abut on it, use the water so as to interfere with the rights of the lower riparian proprietors. In the absence of any rights acquired by prescription or grant, he can as an ordinary riparian proprietor divert the water for the purposes of irrigation without violating the rights of, and inflicting material injury upon, other riparian proprietors. MAHADU v. NARAYAN, **6 Bom. L.R. 291.**

(2)—*Obstruction—Dam in the bed of a stream—Damage Right to sue*—If a man erects in the bed of a stream a dam which has the effect of diverting the water from its natural water-course on to the land of the plaintiff and damage is thereby done, the plaintiff *prima facie* has a good right of action. MADHAV v. RAKHAMA, **9 Bom. L.R. 864.**

(3)—*Water course—Injury alleged to give cause of action not proved—Declaration of plaintiff's right.*—Where the plaintiff sues to have the bed of a *Pyne* filled up on the allegation that in consequence of defendants clearing the *Pyne*, some injury has been caused to the plaintiff, and it is found that what the plaintiff complained of had not been done, and consequently he had not the right of suit which

Water-course—*concluded.*

he alleged he had, and upon which he had come to Court, his suit ought to be dismissed and the Court is wrong in declaring plaintiff's right and giving directions as to what should be done in the future with regard to the *Pyne*. NUND KISHEN SINGH v. LALLA NIRUNJUN LALL, **18 W.R. 87.**

(4)—Mauza Kakki, *Banza district—Construction of* Wajib ul-arz—An entry in *Wajib ul arz* that the Collector has power to permit the owners of another village to take a water-course through *Mauza Kakki*, the owners of which village being entitled to compensation for such use was held to embody a custom in the district. The water-course thus constructed under the above custom cannot be obstinated as such custom is not unreasonable. DOST MUHAMMAD v. KHAN DURAN KHAN, **37 P.R. 1899.**

See BOM. ACT VII OF 1879, ss. 8, 28, 5 Bom. L.R. 790=28 B. 105.

S. 4 of Mamlatdars Courts Act includes artificial as well as natural water-course—*See* BOM. ACT II OF 1906, s. 4, 2 Bom. L.R. 1136=25 B. 395.

Alteration of—Opening of new channel so as to carry water from the defendant's land into a particular portion of plaintiff's land—Material alteration—Remedy—Injunction—*See* INJUNCTION—SPECIAL CASES, 28 M. 15.

Illegal obstruction of right to injunction on—*See* INJUNCTION—SPECIAL CASES, 4 C.L.J. 370=11 C.W.N. 85.

See LIMITATION ACT, 1908, art. 144, 4 C. P.L.R. 16.

See PROVINCIAL SMALL CAUSE COURTS ACT, 1887, s. 15, art. 35 (1), sch. II, 71 P. R. 1896.

Obstruction of—Diversion—*See* SMALL CAUSE COURT, MOFUSSIL, JURISDICTION OF—GENERAL, 18 M. 28.

Water Mill.

Suit for fixation of rent due from occupant of water-mill—*See* JURISDICTION OF REVENUE COURTS, 29 P.L.R. 1912.

Water-rate.

Patta—Wet cultivation on dry land—Inclusion of water-rate in patta—Provision in patta against possible contingency—Determination of water-rate—*See* MAD. ACT VIII OF 1865, s. 11, 12 M.L.J. 11.

Levy of—Non-supply of water—Suit for damages—*See* MAD. ACT V OF 1878, 3 M. 201.

Liability to—*See* MAD. ACT V OF 1878, 2 M. 362, F.B.

Suit to recover water-rate wrongly levied for two faslis—Notice given by two out of three owners of land in respect of one fasli only—Sufficiency of notice—Cause of action—*See* CIV. PRO. CODE, 1908, s. 80, 24 M. 279=11 M.L.J. 117.

Water-rate—*concluded.*

Grant of village as inam by Government—Subsequent increase in area under wet cultivation—Right of Government to charge—for increased area—*See* EASEMENTS ACT, 1882, 13 (*c*), 26 M. 66.

Power of Government to charge prohibitory—for the use of Government water—Power to levy as a penalty—*See* GOVERNMENT, 5 M.L.T. 214.

Lease silent as to apportionment of any increase in—Rule to be followed—*See* LANDLORD AND TENANT—MISCELLANEOUS, 4 M.L.T. 460.

Water Rights.

See RIGHT TO USE OF WATER.

(1)—*Water rights — Respective rights of riparian proprietors above and below—Quantity of water which can be abstracted by riparian owner—Reparian owner's right to contruct dam and take water for irrigation*—A riparian owner, where a stream flows in a channel down from a property higher up, is entitled to the flow of water without interruption and without substantial diminution caused by the upper riparian proprietor, who may, for legitimate purposes, withdraw so much only of the water as will not materially lessen the downward flow on to his neighbour's land. What quantity of water can be abstracted and consumed, without infringing the rights of the lower riparian proprietors must, in all cases, be a question of circumstances depending mainly upon the size of the river or stream, and the proportion which the water abstracted bears to its entire volume. The plaintiffs, upper riparian owners, claimed the unrestricted right of constructing a dam and of taking, for irrigation purposes, as much water as they liked, without any proof that they had ever done so before, or that they had enjoyed the right by prescription or custom. *Held* that in the absence of acquisition of such right by contract with lower riparian proprietors, or by prescriptive use, the law conceded no such right. DEBI PERSHAD SINGH v. JOYNATH SINGH, **7 M.L.J. 120, P.C.=24 C. 865=1 C.W.N. 401=24 I.A. 60=7 Sar. 209.** [*F.*, 28 M. 236; *Appr.*, 11 C.W.N. 85=4 C.L.J. 370; *R.*, 3 L.B.R. 23. 35 C. 851, 32 M. 141=19 M.L.J. 131=5 M.L.T. 149; *D.*, 29 C. 100.]

(2)—*Burden of proof—Supply of water through Government source—Second crop cultivation—Liability of Zeminddr to pay water cess.*—Where the Zemindar's tanks depend for their supply upon the water flowing through a Government source, he may be entitled to a certain supply of water free; but the burden of proving the extent to which he is entitled lies on the Zemindar alone, and if he fails to sustain this burden his suit to that extent must be dismissed and he cannot get a refund of the water cess he had paid. MARIA SUSAI MUDALIAR v. THE SECRETARY OF STATE FOR INDIA IN COUNCIL, **14 M.L.J. 350.** [*D.*, 34 M. 21=20 M.L.J. 766=7 M.L.T. 407=8 Ind. Cas. 357.]

Water Rights—*concluded.*

(3)—*Owner of Inam village—Natural stream running through village—Ownership of bed of stream—Right to use of water.*—The owner of an Inam village through which a natural stream is running, who is found to be the owner of the bed of the stream, is entitled to the reasonable use of the water in the channel, provided he does not interfere with the right of the Government, as a riparian proprietor lower down. His right should not be limited to the irrigation of a single field. But, he will not be at liberty to appreciably diminish the customary supply of water to any of the riparian proprietors lower down the stream. NARASIMHA SASTRIAL v. THE SECRETARY OF STATE, **1 M.L.J. 167.**

See DAMAGES—DAMAGES, SUITS FOR, 2 B.L.R. App. 53 (*a*).

Water Supply.

See BOM. ACT III OF 1888, 23 B. 358.

Water-tax.

See MAD. ACT VIII OF 1865, s. 11, 7 M. 182.

Landlord and tenant—Payment of water-tax by tenant—Liability of Zemindar to contribute—*See* MAD. ACT VIII OF 1865, s. 69, 10 M.L.J. 398.

Way.

See HIGHWAY.

(1)—*Way, Right of—Immoveable property—Specific Relief Act, s. 9.*—A right of way is not immoveable property within the meaning of s. 9 of the Specific Relief Act, 1877. *Per Fulton, J.*—Right of way is an interest in land, but it is an interest entirely dependent on the possession of the property to which it appertains, and cannot be possessed apart from it. It is a right appurtenant to property but taken by itself does not come within the term property which under s. 9 of the Specific Relief Act must be property capable of separate enjoyment as an independent right. MANGALDAS v. JEWANRAM, **1 Bom. L.R. 167=23 B. 673.**

(2)—*Nature of—Grant of—Foot passenger—Drift way—Way for cattle.*—*Prima facie* the right of way is the grant of the right of way having regard to the nature of the road over which it is granted and the purpose for which it is intended to be used, and both these circumstances may be legitimately called in aid in determining whether it is a general right of way restricted to foot passengers as restricted to foot passengers and horseman and cattle which is generally called a drift way or a general right of way for carts, horses, carriages and everything else. HARI v. RAMCHANDRA, **5 Bom. L.R. 650.**

Easement of necessity—Right of way—Other means of access—*See* EASEMENT, 7 M.L.T. 288=6 Ind. Cas. 605.

Right of—Decision against mortgagor in possession — Mortgagee not estopped— *See* ESTOPPEL—ESTOPPEL BY JUDGMENT, 4 C. 692.

Way – *concluded.*

Right of way—Private right —Origin — Special damage—Acquiescence—*See* LIMITATION ACT, 1908, s. 26, 8 Ind. Cas. 1196.

User as of right—Elements—User of Oothan —Relation and neighbour—*See* LIMITATION ACT, 1908, s. 26, 13 C.L.J. 316.

Claim of private right by plaintiff over land —Claim of public right by defendants—Cause of action—Parties—*See* SPECIFIC RELIEF ACT, 1877, s. 42, 6 Ind. Cas. 46.

Wazifa Grant.

(1)—Wazifa *grant— Nature and incidents of.* —A *Wazifa* grant is not always or necessarily a religious endowment, though it may in some cases amount to such an endowment. The mere use of the term *wazif* or *wazifa* in connection with an inam grant of a village cannot, by itself, render the grant a *wakf* or a religious endowment. SAYAD MAHOMED ALI v. SAYAD BOBAR ALI, **6 B. 88.** [*R.*, 13 B. 264.]

Well.

Well, right to use water *of*—*See* BOM. ACT III OF 1876, 2 Bom. L.R. 243.

Construction of well by tenant—*See* U. P. ACT XVIII OF 1873, s. 93 (*b*), A.W.N. 1881, 2.

Suit by co-sharer for demolition of—Constructed by a third person with the consent of other co-sharers—Remedy of non-consenting co-sharer against the person building with the consent of other co sharers—*See* CO-SHARERS —SUITS BY CO SHARERS, 7 O.C. 336.

See EASEMENT, A.W.N. 1889, 133.

See ENHANCEMENT OF RENT—ENHANCEMENT, GROUNDS OF, 3 N.W.P. 282.

Digging well or planting trees without permission—Ejectment—Forfeiture of lease as for breach of condition—*See* LANDLORD AND TENANT—ALTERATION OF CONDITIONS OF TENANCY, Agra F.B. 119=Ed. 1874, 89.

See LANDLORD AND TENANT—ALTERATION OF CONDITIONS OF TENANCY, 3 N.W.P. 282, 4 N.W.P. 160.

Hindu Law—Dug by tenant with landlord's permission—Compensation on determination of tenancy—*See* LANDLORD AND TENANT—COMPENSATION FOR IMPROVEMENTS, 10 M. 112.

Construction of—by mortgagee—Liability of mortgagor to pay cost of such construction when mortgagee has purchased a portion of the equity of redemption—*See* MORTGAGE—REDEMPTION, 3 A.L.J. 435=28 A. 593=A.W.N. 1906, 150.

See PRESCRIPTION — EASEMENTS — WATER RIGHT CONCERNING, 20 M. 389.

Well Water.

Well-water, mere non-exercise of the right to use does not destroy the right—*See* POSSESSION—NATURE OF POSSESSION, 2 Bom. L.R. 620.

Wharf.

See FERRY, 14 C.W.N. 410, P.C.=5 Ind. Cas. 842.

Wharfingers.

See BILL OF LADING, 4 C. 736=3 C.L.R. 585.

Wharfinger's Lien.

See LIEN, 8 C. 312.

Widow.

See ACT XV OF 1856.

See HINDU LAW—WIDOW.

See RE MARRIAGE.

(1)—*Hindu Law—Adoption of person not a member of husband's family—Validity—Sanction of husband's kindred, if necessary.*—The adoption by a widow of a person not a member of her husband's family, *i.e.*, her nephew, is not invalid under Hindu law, nor is it necessary for her to obtain the sanction of her husband's family before making such an adoption. MUSSAMUT LUDEEA v KOOLLA, **3 P.R. 1866.**

Certificate of husband's property — *See* CERTIFICATE OF ADMINISTRATION—ISSUE OF CERTIFICATE, 1 Ind. Jur. O S 36.

Certificate to collect debts — Preference between major son and—representing minor son—*See* CERTIFICATE TO COLLECT DEBTS, 5 C. 219=4 C.L.R. 398.

Legal representative including widow and heiress—*See* CIV. PRO. CODE, 1908, s. 52, 22 C. 259.

See CUSTOMS — PUNJAB — ALIENATION, 121 P.R. 1893.

See CUSTOMS — PUNJAB — INHERITANCE, 2 P.R. 1888, 29 P.R. 1895.

Life estate— *See* CUSTOMS—PUNJAB—MISCELLANEOUS, 16 P.L.R. 1902=17 P.R. 1902.

See DOMICILE, 19 B. 694.

Decree against, in fair trial, whether binds reversioners—*See* ESTOPPEL—ESTOPPEL BY JUDGMENT, 6 C.L.J. 621.

Suit against widow as representing deceased husband's estate—Liability of estate in execution—*See* EXECUTION OF DECREE—MISCELLANEOUS, 11 C. 45.

Suit by the agent's representative for enforcing gift against widow's successor—*See* GIFT, 18 C. 545=18 I.A. 144, P.C.

Power of adoption conferred on, when becomes incapable of execution—*See* HINDU LAW—ADOPTION, 4 C.L.J. 357=11 C.W.N. 12=33 C. 1306.

Proof—Compromise of suit by—*See* HINDU LAW—ADOPTION, 6 C.L.R. 76, P.C.

Suit by a Mahomedan—for declaration of right to estate—Custom—Suits for distributive share of property—Suit for moveable property wrongly taken—*See* LIMITATION ACT, 1908, arts. 49, 120, 123, 21 C. 157, P.C.=20 I.A. 155.

Widow—*concluded.*

Mahomedan Law—Widow's right to "return" of deceased husband's estate—*See* MAHOMEDAN LAW—INHERITAECE, 11 C. 14.

Mahomedan Law — Widow's rights — The doctrine of return—Rights of Crown—*See* MAHOMEDAN LAW—INHERITANCE, 3 C. 702 =2 C.L.R. 46.

Suit substantially against infant—Decree against widow and heiress of deceased landholder, representing her infant son—Sale-certificate describing judgment-debtor as widow of deceased and mother of infant son—Description irregular—Effect—*See* MINOR—SUITS BY AND AGAINST MINORS, 20 C. 11.

Proprietor of an estate and Hindu widow of shebait, distinguished — Mortgagor — *See* MORTGAGE—MISCELLANEOUS, 22 C. 364.

Compromise between widow and husband's brothers—Suit for maintenance provided for —*See* PROVINCIAL SMALL CAUSE COURTS ACT, 1887, sch. II, arts. 31, 38, 26 A. 321.

See RES JUDICATA—GENERAL, 20 C. 79, P.C.=19 I.A. 234.

See RES JUDICATA—PARTIES, 1 A. 282.

Life interest—Gift over to widow or issue of donee—*See* WILL—CONSTRUCTION, 19 B. 770.

Widower.

Adoption by—Validity of—*See* HINDU LAW —ADOPTION, 2 M.H.C. 367.

Adoption by—or bachelor—*See* HINDU LAW —ADOPTION, 4 M.H.C. 270.

Widow Re-marriage.

See ACT XV OF 1856.

See HINDU LAW—MARRIAGE.

See HINDU LAW—WIDOW.

See RE-MARRIAGE.

See WIDOW.

(1)—*Cess leviable according to village custom —Re-marriage of widows—Maintainabilily of suit—Act* XIX *of* 1873 (*N.W.P.*) *Land Revenue Act*), s. 66 *Requisites of a valid custom—Entry of cess—Not conclusive evidence of custom—Cess leviable on marriage—Inapplicability of English analogies.*—A Civil Court cannot enforce a cess leviable according to village custom on the re-marriage of widows of a particular sect, when such cess is not recorded in the settlement record, under the general or special sanction of the Local Government. (S. 66, N.W.P. Land Revenue Act.) Among the conditions essential for establishing a custom are that it is of remote antiquity, that it has been continued and acquiesced in, that it is reasonable, and is certain and not indefinite in its character. The mere entry of a customary cess by a settlement officer may be important evidence of custom, but it is not conclusive proof of it. *Per Stuart, C. J.*—That public policy favours marriage and that a

Widow Re-marriage—*concluded.*

custom, which allows the levy of a cess on marriages is opposed to such policy, are considerations derivable from English law and are inapplicable to cases in this country where Zemindars sometimes claim such cesses on the strength of village custom. LALA v. HIRA SINGH, **2 A. 49.**

Widow acquiring right in occupancy holding —Effect of re-marriage—Mistake of law—*See* U.P. ACT II OF 1901, s. 22, 4 A.L.J. 475=2 A.W.N. 1907, 197.

See CUSTOMS —PUNJAB —INHERITANCE, 98 P. R. 1890.

Wife.

See BUDDHIST LAW—HUSBAND AND WIFE.

See HINDU LAW—HUSBAND AND WIFE.

See HUSBAND AND WIFE.

See MAHOMEDAN LAW — HUSBAND AND WIFE.

See MALABAR LAW—HUSBAND AND WIFE.

Custody of minor—Custody of wife.—*See* ACT IX OF 1861, 3 A. 506.

Second—*See* BUDDHIST LAW—IN HERITANCE, L. B. R. 1872—1892, 6, 33.

Decree for possession of wife—Enforcing execution of decree—*See* CIV. PRO. CODE, 1908, O. XXI, rr. 31, 32, 1 Ind. Jur. N.S. 101 =5 W. R. Mis. 29.

See CONTRACT—ILLEGAL CONTRACTS, 19 P. R. 1867.

See MAHOMEDAN LAW—GUARDIANSHIP, 5 N. W. P. 196.

See MAHOMEDAN LAW — MISCELLANEOUS, 5 B. L. R. 557.

Bequest to—Validity—*See* WILL—CONSTRUCTION, 13 M. 379.

Will procured by wife's importunity — Undue influence—*See* WILL—EXECUTION, 7 M. 515.

Wild Animal.

See ANIMAL.

(1)—*Wild animals—Right of property.*—Wild animals are no longer "the property of a man than while they continue in his keeping or actual possession ; but, if at any time, they regain their natural liberty, his property instantly ceases, unless they have *animum revertendi*, which is only to be known by their usual custom of returning, or unless instantly pursued by the owner, for, during such pursuit, his property remains." CHYTUN CHURN DOSS v. THE COLLECTOR OF SYLHET, **21 W.R. 75.** [*Cons.*, 35 C. 413=12 C.W.N 547.]

(2)—*Wild animals—Animals* feræ naturæ—*Ownership*—Animus revertendi —*Re-capture.*—A tame female elephant escaped from her master's field in company with a herd of wild elephants and resumed her natural wild habits.

Wild Animal—*concluded.*

The owner plaintiff abandoned his search after two months, and then offered a reward of Rs. 200 to any person who should recapture her. At the end of four months, she was recaptured by the defendant who had to tame her in the same way as if she had been an ordinary wild elephant. Plaintiff offered the reward of Rs. 200 to the defendant and demanded the elephant, but the demand was refused. *Held*, that, under the circumstances, the plaintiff had lost all claim to the animal. PEAL v. CAMPBELL, **3 C.L.R. 515.** [*R.*, 35 C. 413=12 C.W.N. 547.]

(3)—*Animal feræ—Pit—Captor, right of.*—He who prepares a pit in order that an animal *feræ* may fall, and into which the animal actually falls, becomes the captor and, as such, owner of the animal, though a third person may get actual possession of it. MAKATH v. KONDAPURN, **4 M. 268.**

(4)—Animals *feræ naturæ*—Damage caused by—Owner and custodian — Liability—*See* TORT, 12 M.L.J. 434=9 M.L.T. 496.

Will.

1.—GENERAL.
2.—ATTESTATION.
3.—CONSTRUCTION.
4.—EXECUTION.
5.—FORM OF WILL.
6.—REVOCATION.
7.—MISCELLANEOUS.

See ADMINISTRATOR.

See BUDDHIST LAW—WILL.

See BURDEN OF PROOF—WILL.

See EXECUTOR.

See HINDU LAW—WILL.

See HINDU WILLS ACT, 1870.

See JURISDICTION—TESTAMENTARY AND INTESTATE JURISDICTION.

See LETTERS OF ADMINISTRATION.

See MAHOMEDAN LAW—WILL.

See MALABAR LAW—WILL.

See PROBATE.

See PROBATE AND ADMINISTRATION ACT, 1881.

See SUCCESSION ACT, 1865.

——1.—General.

See HINDU LAW—WILL.

(1)—*Will—Testator calling document irrevocable—First page of Will signed by testator — Presumption — Evidence — Declaration of testator to make disposition in conformity with those on the other sheets — Admissibility.*—If an instrument is on the face of it of a testamentary character, the mere circumstance that the testator calls it irrevocable, does not alter its quality. The principal test to be applied is, whether the disposition made takes

Will—continued.

——1.—General—*continued.*

effect during the life-time of the executant of the deed, or whether it takes effect after his death. If it is really of the latter nature, it is ambulatory and revocable during his life. Where a testator says, in a paragraph of his will, that he will not be at liberty to settle properties absolutely: *Held*, that such a restraint upon his own power of alienation is absolutely void and that does not indicate any intention to make the deed irrevocable. (12 C.W.N. 942, *R.*, 8 C.W.N. 614, 9 C.W.N. 1021, 32 C. 182, *D.*) One signature made with the intention of authenticating the whole instrument is sufficient, though the will be contained in several sheets of paper, for the presumption is that they were all in the room and formed part of the will at the time of execution. But the presumption is, of course, rebuttable, and if there are suspicious circumstances, the Court must act with great caution. But ordinarily the legal presumption would be applied. In considering whether or not several sheets of paper constitute the will, declarations made by the testator both before and after execution are admissible to show that it was his intention to make dispositions in conformity with those found upon the several sheets of paper. SAGAR CHANDRA MANDAL v. DWARKA NATH MANDAL, **3 Ind. Cas. 380=10 C.L.J. 644=14 C.W.N. 174.**

(2)—*Will—Presumption — Proof of validly executed will not revoked and not forthcoming, by certified copy—S. 24, Act V of 1881.*—If a will, traced to the possession of the deceased, and last seen there, is not forthcoming at the time of his death, it is presumed to have been destroyed by himself; that presumption must have effect, unless there is sufficient evidence to repel it. (1 Moo. P.C. 299, *R.*). The presumption, that a will, in the testator's possession and not forthcoming after his death, has been revoked, does not arise, unless there is evidence to satisfy the Court that it was not in existence at the time of his death. There is another presumption, which, having regard to the habits of the people of this country and especially to those of a wandering fakir, may well arise, *viz.*, that, when a document is not forthcoming after the testator's death, it has been mislaid. A will found to have been duly and validly executed and not to have been revoked if not forthcoming, may be proved by means of a certified copy. Such a case falls under s. 24, Act V of 1881. Letters of Administration, under that section, on the strength of the copy of the will, limited until the original will is produced, may be granted. ANWAR HOSSEIN v. SECRETARY OF STATE FOR INDIA, **31 C. 885=8 C.W.N. 821.**

(3)—*Probate — Codicil — Sound disposing mind*—Onus probandi—*Conclusions of fact—Witnesses—Judges.*—The *onus* of proving that the testator was of sound disposing mind, at the time when he executed a Will or Codicil, is on the person who propounds the Will or

Will—continued.

——1.—**General**—*continued.*

Codicil. It is always difficult for Judges, who have not seen and heard the witnesses, to refuse to adopt the conclusions of fact of those who have; but that difficulty is greatly aggravated, where the Judge who heard them has formed the opinion, not only that their inferences are unsound on the balance of the probability against their story, but that they are not witnesses of truth. SHANMUGARAYA MUDALIAR v. MANIKA MUDALIAR, **11 Bom. L.R. 1206, P.C.=10 C.L.J. 276=6 M.L.T. 304=32 M. 400 =3 Ind. Cas. 799=19 M.L.J. 640=36 I.A. 185.**

(4)—*Disposing mind of testator*—Onus *of proving*—*Right of widow to succeed among Ansari Pathans of Basties in Jullundhar*—*Art.* 91, *Limitation Act* (IX *of* 1908).—*Held*, that:—1. The *onus* of establishing the testamentary capacity of a testator lies on those by whom the will is propounded. So where a testator died a few hours after executing the will, and one of the attesting witnesses deposed that at the time of signing it the testator's breath was irregular and difficult, that he was so weak that he could only sit up with assistance, that he was in the last agonies of death, that he was held up by another person and that water was given to him 2 or 3 times, while a mass of oral reliable evidence for the person opposing the will goes to show that the testator was for several hours before his death in hopeless condition, and had high fever, it cannot be said that the testator had sound disposing mind at the time of executing the will. (1 P.W.R. 1911, P.C.*F.*) 2. A widow among *Ansari Pathans* of the Basties of Jullundhar City succeeds for her life to the whole of the estate left by her husband in the presence of his brother and other near agnates. 3. Article 91, Limitation Act (1877, now Act IX of 1908) has no application to a suit for possession of the property of a testator by a person impugning the genuineness or validity of his will, brought three years after its alleged execution. MURAD BIBI v. KHADIM HUSSAIN, **114 P.W.R. 1911.**

(5)—*Capacity to make a Will*—*Undue influence*—*Burden of proof*—*Evidence, nature of*—*Pleadings*—*Particulars of undue influence*—*Evidence in rebuttal*—*Costs.*—The *onus* of proving that the Will propounded is the last will of the deceased and that the deceased, at the time of making the Will, was of sound and disposing mind, memory and understanding, always lies on the party propounding the Will. Where, however, undue influence is alleged, ordinarily the *onus* of proving that the Will was obtained by the undue influence of other parties lies on those who make the allegation. But, where the testator was an unmarried lady, not of much education or very high order of intelligence, and in very close touch with the plaintiffs, the *onus* of establishing that she was possessed of testamentary capacity and that the Will was made by her without being unduly influenced

Will—continued.

——1.—**General**—*continued.*

by any one, lies wholly on the plaintiffs. The mere fact that a lady afflicted with pain and physical weakness should have indulged in a few pleasant self-deceptions is not sufficient for holding that she should be stamped as an imbecile or an idiot incapable of intelligent appreciation of the ordinary affairs of this world. In order to uphold a Will, it is not necessary to prove that the testator was gifted with a very high order of intelligence. All that is required is that the testator was able to understand his position, to appreciate his property and to form a judgment with respect to the parties whom he wished to benefit by it. If he can do that, it is enough, though he may be very feeble and debilitated in understanding. In order to invalidate a Will on the score of undue influence, it is not sufficient that the Court should think that the testator has been persuaded into making a Will of a particular kind, or that he has been persuaded to benefit this or that person to a certain extent. It must be such an influence as induces the Court to think that the Will as executed is not the Will that the testator desired to make, that it does not benefit the parties whom he would wish to benefit, but that he is doing that which is not his desire and, therefore, not his Will. The undue influence required to set aside a Will is the control of another's will over the testator whose faculties have been so impaired as to submit to the control of such other person, so that the party making the Will has ceased to be a free agent and has adopted the Will of the controlling party. A Will made merely from motives of gratitude or esteem or affection is not a Will made under undue influence. Where the defendant pleads undue influence in an action for probate of a Will, he cannot, be ordered to give in his statement particulars of acts of undue influence or of the time and places where and when they took place. But in such a case, the plaintiff may be allowed to give evidence, at the end of the case, in rebuttal of the defendant's case as regards undue influence. Where the defendant in a probate case adopts a most inimical and offensive attitude towards the plaintiff and makes grave and unfounded charges against the plaintiff, he should be ordered to pay all the costs of the plaintiff. BAPUJI v. SORABJI, **7 Ind. Cas. 301.**

(6)—*Probate*—*Court of first instance*—*Evidence of witnesses*—*Findings of that Court*—*Based on prepossessions and preconceived theories*—*Appellate Court's duty*—Onus *of proof of will and testamentary capacity*—*Duty of person propounding will to discharge such* onus. Where, in a particular case, the questions at issue depend entirely on the proper appreciation of evidence of the witnesses examined in the case, it is an obvious duty of the appellate tribunal not to disturb the conclusion of the Court of trial, unless it is satisfied that the Judge of first instance, who had the witnesses before him, has, in dealing with the evidence, adopted an erroneous procedure and

Will—continued.

—— 1.—**General**—*continued.*

has decided against clear weight of evidence. But where the Court of first instance approached the evidence in support of a will with strong prepossessions against its authenticity based on what he considers to be suspicious circumstances connected with its appearance and the tenor of its contents, and rejected that evidence mainly on certain preconceived theories of his own as regards the credibility of witnesses belonging to a certain class, and had also shown himself too prone to listen to reckless charges and insinuations of corruption. *Held*, that the procedure of the Judge at the trial was wrong and that, in the circumstances, the appellate Court should not attach much weight to his opinion of the evidence in the case. The *onus* is on the person propounding the will to satisfy the Court as to its authenticity and validity. The evidence must be sufficient and reliable to prove that the document is the last will and testament of the deceased, and that, at the time he made it, he was possessed of testamentary capacity, or in other words, was of sound disposing mind. S. R. M RAMASAMI CHETTI *alias* CHINNIAH CHETTI v. KARUTHALACHI, **11 M L T. 38.**

(7)—*Genuineness of, method of procedure followed in ascertaining—Judgment of positive evidence from standpoint of opinion formed about, contents of—Legality of procedure.*—The only question for decision in this case, before their Lordships of the Privy Council, was as to the genuineness or otherwise of a will. The Subordinate Judge, from a consideration of the contents of the will, which he considered so extraordinary as to over-balance altogether the evidence of the witnesses, who spoke to having been present and seen the testator sign the will and to having themselves signed the will as witnesses, came to the conclusion that the will was not genuine. *Held*, that the High Court was correct in holding that the will was genuine. The Subordinate Judge's method of procedure in discussing the question before him was erroneous. The Subordinate Judge was wrong in having first made up his mind about the contents of the will and then looked at the positive evidence in favour of its execution from that standpoint. MUSSAMMAT BULLI KUNWAR v MUSSAMMAT BHAGIRATHI, **9 C.W.N. 649=15 M.L J. 265, P.C.**

(8)—*Will by widow with consent of reversioner—Validity—Act* VIII *of* 1827, *certificate of heirship under—Effect.*—Where a will is made by a Hindu widow with the consent of her next reversioner—the only relation interested in disputing the same—such a will is valid and binding. Where the provisions of the Indian Succession Act are not applicable to a will, the Courts need not concern itself with the question whether the written will is duly signed by the testatrix and attested, but with the question whether the document contains the formal expression of the wishes of the testatrix as to the disposal of her property after her death; and whether it was made at a time when she was in her senses. A certificate of heirship under Act VIII of 1827 confers no further rights on the grantee of the same, than to permit debtors to pay their debts, and others who have the possession of the estate to give up the possession to the grantee, to relieve themselves of further liabilities. It does not enable the grantee to give a good title to a stranger in respect of property over which he is not given any power of disposition by the Will. JIWANMAL v. NIHALCHAND HIRANAND, **1 S.L.R. 196.**

Will - continued.

——1.—**General**—*continued.*

(9)—*Will—Alienation of land—Hindu law—Custom among Awal Khatris—Burden of proof.*—Customary law allows alienations of land by will among agriculturists to the same extent that it sanctions gifts in the life-time of the owner. (81 P.R. 1877, *F.*) Wills have been thoroughly engrafted into the personal law of Hindus by a long course of decisions by the Courts of Justice in India, as well as by the Privy Council. Found that among *Awal Khatris* of village *Chak Awal* of Tahsil Ajnala, a childless proprietor can alienate his land by Will; that the Will can be held good under Hindu law in the absence of proof of custom that Wills are prohibited in the costs of the parties, and that the *onus* of proof of a custom invalidating Wills altogether is on the party asserting it. GANESHA v. GANPAT, **198 P.R. 1889.** (107 P.R 1887, F.B., *R.*) [*Appr.*, 26 P.R 1901=65 P.L.R. 1901, 48 P.R. 1903=111 P.L.R. 1903; *D.*, 69 P.R 1890.]

(10)—*Probate and Administration Act*, 1881, *ss.* 33 *and* 64—*Letters of administration—Oral will.*—A person of the Bhabra caste died leaving him surviving first cousins and next-of-kin (defendants) and his concubine of another caste by whom he had a son. After his death, his concubine applied, on behalf of the minor son, for probate and administration under s. 64, Probate Act, on the basis of an oral will alleged to have been made by the deceased. The District Judge held the will was valid by custom so far as the moveable properties of the deceased were concerned and granted letters of administration to the woman in respect of such property, but refused the application in regard to the deceased's immoveable property: The Chief Court on appeal *held* that the will had not been proved and that, though the minor's legitimacy might be assumed, the woman was unfit to be appointed guardian of the minor and directed the grant of letters to the defendants. NATHU MAL v. MANNU MAL, **105 P.R. 1893.**

(11)—*Will of an illiterate person—Insertion of certain provisions without testator's knowledge—Validity of such a will—Application for probate—Probate for portion of will.*—The testator was an illiterate person. After his death, the petitioner, one of his sons, made an application for probate of the will. The step-brothers of the petitioner opposed the application on the ground that the will was not genuine

Will—continued.

——1.—General—*continued.*

and was never executed by their father. The lower Court having found, upon the evidence, that the testator was practically illiterate, though he could just sign his name, that the signatures upon the will are genuine but that he executed it without a full knowledge of all its contents, dismissed the application for probate. *Held*, that, in the case of a will of an illiterate person, the ordinary rule—that it is essential to the validity of a will that, at the time of its execution, the testator should know and approve of its contents—must be strictly followed, and the Court must be satisfied, beyond any doubt, that the whole of the will was read over to the testator before its execution, or that the testator had, at such time, knowledge of every provision of the will, or, in other words, that the particular devise expresses his mind and will. *Held*, also, that, where certain portions of a will are inserted in it without the testator's knowledge, such portions may be omitted and probate may be granted of the remainder. GIRISH CHANDRA DE v. RASHA RAJ DE, **1 C L J. 109.** [*R.*, 11 O.C. 20.]

(12)—*Will—Document dealing with the property not belonging to testator*—Mohunt *of idol—Provision for succession of* Mohuntship—*Power of Superintendents to dismiss successor—Right of Superintendents to apply for probate—Succession Act* (X *of* 1865), *s.* 3.—A document purporting to be a will dealt with property, which belonged to the idol of a *math* and in which the executant of the document, the *mohunt* of the idol, had himself no right at all. The document also purported to provide for the succession to the *mohuntship* after his death and named A as his successor, and there was a proviso that certain other persons, called superintendents, would be competent to dismiss him for misconduct and appoint a fit person in his place: *Held*, that the document is not a will as it does not contain the legal declaration of the intention of the testator with respect to his property, but purports merely to indicate the person who on his death should be elected to undertake the duties of the *mohunt*; and that the power given to the Superintendents is not such a power of appointment as to give any title to them for obtaining probate. GHANASHYAM MOHANTI v. JAGABANDHU JENA, **5 Ind. Cas. 149.**

(13)—*Will, rules for devolution of trust if constitute—Probate if may be granted of an instrument laying down rules for devolution of trust—Partial probate if may be given—Residuary bequest effect of.*—Where a Mohunt made a Will, the main body of which simply laid down rules for the devolution of trust property, but there was a clause in the following terms: "the said K shall get and shall be entitled of his own accord to make a gift or sale of any other property that I may earn during my lifetime." *Held*—That, whether or not there was any such residuary property, there was here a valid testamentary disposition which may be admitted

Will—continued.

——1.—General—*continued.*

to probate, though the main body of the will, being a deed merely evidencing a devolution of trust, would not by itself be testamentary or admissible to probate. *Held*, further—that, in the circumstances, probate must be granted of the Will as a whole leaving it open to any party to establish his title by suit to any property in respect of which there may be a declaration of trust ineffectual as a Will, and vesting the whole estate in the executor, pending determination of title to such property. BAISNAY CHARAN DASS BAIRAGI v. KISHORE DASS MOHANTA, **15 C.W.N. 1014.**

(14)—*Bequest for charitable grant when void—Estoppel—Exclusion of other evidence to explain what the testator meant by* 'Dharmarth'—*Ss.* 92 *and* 115 *of Act* I *of* 1872.—*Held*, that a bequest or trust for such wide and vague purposes as distribution on *Dharmarth* (which shows that the testator did intend to devote the property to some form of charity) is void, and the property designated for such purposes is undisposed of. *Held*, also that evidence, other than the will itself, to show what the testator meant by the use of the simple word *Dharmarth*, is not admissible *Held*, further, that such a testator's heir is not estopped from contesting the validity of such will, even if he has acted upon it for some years by using the bequeathed property for some sort of charity. GURDIT SINGH v. SHER SINGH, **63 P.W.R. 1912.** (3 B. 725, P.C. *F.*)

(15)—*Hindu Law—Competency of minor to make Will — Succession Act* (X *of* 1865), *s.* 46—*Hindu Wills Act* (XXI *of* 1870), *s.* 2—*Majority Act* IX *of* 1875, *s.* 3, *Guardian and Wards Act* (VIII *of* 1890), *s.* 52.—Where a guardian has been validly appointed or declared under the Guardian and Wards Act, the minority of the ward does not cease till he attains the age of 21 years, and it is immaterial whether the guardian dies, or is removed, or otherwise ceases to act. And, therefore, where a guardian was appointed but he died and no fresh guardian was appointed, the ward cannot make a valid Will before he attains the age of 21 years. DIPA KOER v. LAKSHMI NARAIN SINGH, **6 Ind. Cas. 6.** (13 C.W.N. 643, 36 C. 768, 11 C. 724, *F.*)

(16)—*Mahomedan Law—Probate.*—A nuncupative will of a Mahomedan can be admitted to probate under the Probate and Administration Act, 1881. MARIAMBAI v. HUSAM AHMED, **1 Bom. L.R. 715=24 B. 8.**

(17)—*Maintainability of suit for cancellation of—During the life-time of the testator.*—The plaintiff in this case sued his father for the cancellation of "a document apparently a will" executed by the latter. *Held*, that no suit for cancellation of a will can lie in the life-time of the testator inasmuch, as the testator may, so long as he is living, at any moment, cancel his will and make a totally different disposition of his property. This power he possesses up to

Will—continued.

—1.—**General**—*continued.*

the hour of his death. RAMBHAJAN KUNWAR v. GURCHARAN KUNWAR, **27 A. 14=1 A.L.J. 468.**

(18)—*Declaratory suit—Will—Suit to set aside, Will reciting adoption—Will revoked—Suit still maintainable.*—The plaintiff sued *inter alia* for a declaration that the will in dispute was invalid by custom. One of the reliefs sought by the plaintiff was a declaration that S was wrongly described in the will in dispute as adopted. The defence was that S had been adopted long before the will was executed. On appeal, the suit was dismissed on the ground that the testator had revoked the Will. *Held*, that the suit was wrongly dismissed; for the question of validity of the adoption ought to have been determined in the suit; the fact that the testator revoked the will did not affect the fact that he had stated that he had adopted S. KAHNA v. SUNDER SINGH, **61 P.L.R. 1909=81 P.W.R. 1909=4 Ind Cas. 482.**

(19)—*Cancellation of will—Suit for—Defence custom and genuineness of will—Will declared forgery—Whether issue as to custom fit and proper to be tried.*—Plaintiffs, who were daughters of the last owner, sought for a declaration that a will alleged to have been executed by their father was a false and fraudulent document and not binding on them. The defendants in answer set up the will in their favour and also a custom by virtue of which the daughters would be excluded from inheritance of their father's property. The Court below held that the will was a forgery, but he dismissed the suit on the ground that the custom was proved. *Held*, that, as members of their father's family, the daughters who, but for the will, on the death of their mother, would take the property of their father, had a cause of action which entitled them to bring the suit, and the issue whether or not a custom existed excluding them from inheritance was not a fit and proper issue to be determined in the present suit. RISALI v. BALAK RAM, **9 A.L.J. 367.**

(20)—*Bequest of hereditary trusteeship—Acquisition by adverse possession—Nature of estate acquired.*—Where a person took under a will, he must be considered to have prescribed for the estate which the will purports to confer upon him, as for instance in the present suit, that of a hereditary trustee, and that, if his title was perfected by adverse possession, he must be considered to have held a hereditary trusteeship with all the incidents attaching thereto. SATYANARAYANAMMA v. KOLLARA NARAYANAMMA, **7 M.L.T. 189.** (6 M.L.J. 255, *R.*)

(21)—*Legacy, specific or demonstrative—Particular fund not legally chargeable with payment—Demonstrative legacy, non-ademption of—Ss.* 137, 140, *Succession Act*, 1865.—Demonstrative legacies will not fail, if the particular fund, though in existence, cannot, by reason of

Will—continued.

—1.—**General**—*continued.*

some provision of law of which the testator was apparently in ignorance, be charged with the payment of the legacy in question. Where the hereditary *jagirs* of a testator were bequeathed to his surviving son, with a direction that out of the income of the said *jagirs*, his predeceased son's adopted son should receive a certain sum every year from the legatee, *held*, in the circumstances of the case, that the annuity was a "demonstrative legacy" within the meaning of ss. 137, 140 of Act X of 1865. BHAGWAN DAS v RAM DAS, **109 P.R. 1908=16 P.L.R. 1908=168 P.W.R. 1908.**

(22)—*Bequest with private instructions giving pecuniary legacies to certain parties and bulk of property to Church—Private instructions of testator suppressed by legatee-appellant—Validity of will—Trusts Act s. 5 proviso to ss. 5, 81 and 83—Applicability of s. 81—Applicability of English Law—Effect of such will—Fraud—Estoppel—Contract—Letters of Administration, right to.*—Petition for grant of Letters of Administration of estate of a Roman Catholic priest, with the will annexed by which the petitioner was made residuary legatee. A *caveat* was put in by one of the next-of-kin, alleging in effect that the testator had bequeathed the estate to the petitioner, subject to certain instructions as to how the property should be disposed of; and that the petitioner had fraudulently suppressed the private instructions left by the testator in order to claim the estate for himself. It was found that the will did not really express the intentions of the testator, as the plaintiff undertook to dispose of the property in other ways, explained to him by the testator, and that the petitioner was aware, from the first, of the testator's intention that the property should be disposed of according to the testator's instructions. *Held*, that, if an individual on his death-bed, or at any other time, is persuaded by his heir-at-law, or his next-of-kin, to abstain from making a will, or if the same individual, having made a will, communicates the disposition to the person on the face of the will benefited by that disposition, but at the same time, says to that individual that he has a purpose to answer which he has not expressed in the will, but which he relies on the disponee to carry into effect and the disponee assents to it either expressly or by any mode of action which the disponee knows must give the testator the impression and belief that he fully assents to the request, then undoubtedly, the heir at law in the one case, and the disponee in the other, will be converted into trustees simply on the ground that an individual shall not be benefited by his own personal fraud. The proviso to s. 5 of the Indian Trusts Act which embodies the English equitable rule makes the English Law applicable to India. (30 C. 783, 22 A. 149, P.C., 29 M. 336; F.B., *R.*; 15 M. 424, *R.*) *Per Wallis, J.*—The present case does not come within the provisions of s. 81 of the Trusts Act and, on the other hand, there is statutory

Will—continued.

——1.—**General**—*continued.*

authority in the Act for applying the principles laid down in the English cases. *Per Curiam.* —When a legatee or trustee claims as universal legatee, and suppresses the secret instructions given by the testator without stating what they are, with the evident intention of retaining the estate himself, it is clear that the Letters of Administration would enable him to commit fraud, and, therefore, ought not to be granted. *Per Sankaran Nair, J.*—S 81 of the Trusts Act applies even if the testator intending to dispose of the beneficial interest to others leaves his estate to the devisee. The words "intended to dispose of the beneficial interest therein" in s. 81 have reference to the disposal of the beneficial interest by the transfer or will. In England, evidence appears to be admissible only to prove a trust, but not to prove that the legal estate alone passed. In India, once the evidence is admitted and it is proved that the devisee is only a trustee, he takes no beneficial interest in the property, but holds it only for the benefit of the testator's legal representative, but, under the English Law, he holds it absolutely except where knowledge of the testator's wishes and a fraudulent intention on the part of the devisee, or except where an admission by him that he holds merely as trustee, is shown. *Obiter.*—Under the Indian Trusts Act, the beneficiary has no estate or interest in the subject-matter of the trust; he has only a right to proceed against the trustee. *Per Sankaran Nair, J.* (*Wallis, J., dissenting*), s. 187 of the Indian Succession Act is no bar to a claim by a beneficiary against a legatee, entitled as universal legatee to Letters of Administration to enforce the trust, which a testator has created by giving secret instructions not embodied in the will. *Per Sankaran Nair, J.* —Though the title of an administrator does not come into existence until the grant of administration, when granted, it relates back to the time of the death of the testator, and where the act is done by a party who afterwards becomes administrator for the benefit of the estate or to fulfil the wishes of the testator, the relation back subsists and the act is valid. Where a person is both an executor *de son tort* and the universal legatee, he has all the liabilities that belong to the character of executor and universal legatee and cannot plead his omission to obtain Letters of Administration against a beneficiary seeking to enforce the trusts that the legatee is bound to discharge. *Per Wallis, J.*—A legacy cannot be recovered without administration of the testator's estate, and, where there has been no grant of probate or Letters of Administration, a suit by a beneficiary to enforce the trusts fails. LOUIS KUNHA v. COELHO AND LOUIS KUNHA v. SOUZA, **18 M.L.J. 158=31 M. 187.** [*R.*, 32 M. 443=2 Ind. Cas. 4.]

(23)—*Sale in execution—Effect of sale—Attachment—Property agreed to be sold before attachment—Receipt of consideration—Priority*

Will—continued.

——1.—**General**—*continued.*

—Vendee—Auction-purchaser—Will—Property bequeathed by Will—Power of devisee to deal with property before obtaining Letters of Administration.—Certain property was bequeathed to A by Will. Before obtaining Letters of Administration to the estate of the deceased, A agreed to sell the property to B and received the full consideration. The execution of the conveyance was postponed till Letters of Administration were obtained. Meanwhile the property was attached in execution of a decree against A, put up to sale and purchased by C who thereupon sued for possession of the property: *Held*, that C was not entitled to oust B. What C purchased at the auction sale was the right, title and interest of A in the property, and after the sale C stood in the shoes of A. The right of B, who had paid the purchase money before the attachment and was in possession, could not be defeated by the auction sale. As the property was bequeathed to A by Will, he had the power to deal with it before he obtained Letters of Administration. FAKIR MAHOMED v. AGA MAHOMED ALLI, **12 Ind. Cas. 831.** (5 L.B.R. 6, 2 Ind. Cas. 350, *Expl. & R.*)

(24)—*Life-tenant under Will—Whether can mortgage the interest of devisee.*—A person, who is not the executor or guardian of the devisee, cannot mortgage the latter's interest, only because he himself is a life-tenant of property under the Will. T. S AYIRANTHA CHETTY v. ARAMANATHOCHI, **6 Ind. Cas. 533=8 M L. T. 98.**

(25)—*Caveat — Caveators withdrawing on propounders agreeing to pay an allowance — Personal liability of executors — Settlement of* bona fide *dispute— Enforcement of agreement if opposed to public policy — Registration.*— Where, on the executors propounding a Will, the widows of the deceased entered caveat, but, before the case came on for hearing, the parties settled their differences and the caveators withdrew their objections on the executors undertaking, *inter alia*, to pay them a fixed monthly allowance for performing religious acts, although the will purported to provide for grants of money for such purposes only out of the surplus income. *Held, affirming, Doss, J.*— That the agreement, having been entered into in order to settle a *bona fide* dispute, was enforceable, and as the liability which the executors undertook appeared to be a personal one, the fact that the agreement was not registered or that the terms went beyond those of the Will, were no bar to its enforcement. SURJA PRASAD SUKUL v. SHYAMA SUNDARI DEBI, **14 C.W.N. 967=7 Ind. Cas. 550.**

(26)—*Suit by legatees claiming under the will —Consent decree—Subsequent suit between parties—Question as to genuineness of the Will—Estoppel*—Res judicata.—In a suit by plaintiff to recover possession of properties from third defendant, third defendant set up a will and alleged that he was the adopted son of the

Will—continued.

—— 1.—**General**—*continued.*

testator. Plaintiff, the widow of the testator, denied both the Will and the adoption. In a previous suit by certain beneficiaries claiming under the Will, wherein the present plaintiff was also a party, a consent decree was passed and neither the will nor the adoption was impeached: *Held*, that that decree would not operate as an estoppel or *res judicata* against the plaintiff. PUTTA VENKATA SATYANARAYANA v. PUTTA GANGAMMA, **11 Ind. Cas. 834.**

(27)—*Probate—Copy—Proof—Admissibility—Public document—Secondary evidence—Evidence Act* (I *of* 1872), *ss.* 65 (*e*), 74 (1) (*iii*)—*Succession Certificate Act* (VII *of* 1889), *s.* 1 (4)—Res judicata—*Failure to plead Will in certificate proceedings—Knowledge of executor—Revocation of certificate.*—Probate of a Will is never proved by the production of the original Will. A copy of the Probate granted in Australia is admissible in evidence in India. Such a copy is the copy of the Will and of the endorsement made thereon by the Registrar of Probate showing that the Will has been filed and proved in Court granting the Probate. The will when so recorded and endorsed is a public document under s. 74 (1) (iii) of the Evidence Act which may be proved by secondary evidence under s. 65 (*e*). A succession certificate was granted in respect of the assets of a deceased person. No objection was taken in the certificate proceedings that the deceased had left any Will. Subsequently, a Will made by the deceased was produced and admitted to Probate in Australia. The executor then applied for the revocation of the certificate. The person who held the certificate contended that the matter was *res judicata*, as any objection to the grant of the certificate ought to have been made in certificate proceedings: *Held*, that the matter would not be *res judicata* unless the executor was aware of the existence of the Will at the time of the certificate proceedings. In the absence of any such evidence, the question was not *res judicata*. The Court may of its own motion revoke a certificate if it appears that the application contained an untrue allegation of fact essential in point of law to justify the grant thereof. The existence of a Will is an impediment to the grant of a certificate under s. 1 (4) of the Succession Certificate Act. *In the matter of* ADIJA, **11 Ind. Cas. 261.**

(28)—*Will by Hindu testator—Next-of kin—Right of inspection on application.*—Where a Hindu has died leaving a Will, the deceased's nearest of kin who would be entitled to succeed to his property but for the Will, where such Will was in the possession of third persons, would be entitled on application to the Court to inspect the testamentary papers in order to judge whether his rights as next-of-kin are taken away. The High Court has always been in the habit of exercising testamentary and intestate jurisdiction, over the Wills and estates of deceased Hindus and Mahomedans, and it is

Will—continued.

——1.—**General**—*continued.*

difficult to define the exact limits of that jurisdiction. In the present case, the actual order passed was that the party in possession of the testamentary papers should deposit them in the hands of the officer of the Court, and that the applicant was to have an opportunity of inspecting and taking a copy of them. *In re* BALKRISHNA GANPATJI, **1 B.H.C. 114.**

See ACT XIX OF 1841, ss. 3, 4 and 15, 66 P. R. 1882.

Not registered — Subsequent addendum registered—Validity of will—*See* U. P. ACT I OF 1869, s. 13, 25 A. 121, P.C.

Devise of Taluk— Requirement of registration—*See* U.P. ACT I OF 1869, s. 13, 10 C. 482=11 I.A. 1, P.C.

Devise of taluk to sister's son—Registration of—*See* U.P. ACT I OF 1869, s. 13, 10 C. 976, P.C.=11 I. A. 121.

Genuineness of — Burden of proof—*See* APPEAL TO PRIVY COUNCIL—PRACTICE AND PROCEDURE, 13 C.W.N. 782=5 M.L.T. 384, P.C.=3 Ind. Cas. 997.

Probate—Application for—Caveat—Reference to arbitration—Award, effect of—*See* ARBITRATION—REFERENCE TO ARBITRATOR, 20 B. 238.

See BUDDHIST LAW—INHERITANCE, L.B. R. 1872—1892, 46, 70, 95.

See CERTIFICATE OF ADMINISTRATION—CANCELLING CERTIFICATE, 4 W.R. Mis. 16.

See CERTIFICATE OF ADMINISTRATION—PROCEDURE, 11 W.R. 341.

See CERTIFICATE OF ADMINISTRATION—MISCELLANEOUS, 2 W.R. Mis. 47.

A legatee can sue the executors to recover the legacy bequeathed to him: he is under no obligation to bring an administration suit making the other legatees parties to it—*See* CIV. PRO. CODE, 1908, O. XXI, r. 11 (2), 3 Bom. L.R. 932=26 B. 301.

Whether an alienation—*See* CIV. PRO. CODE, 1908, sch. III, r. 10, 7 A.L.J. 1176=8 Ind. Cas. 834.

See CUSTOMS—PUNJAB—ALIENATION, 34 P.R. 1891, 44 P.R. 1897, 24 P.R. 1898, 22 P. R. 1899, 11 P.L.R. 1900, 80 P.R. 1901, 65 P. L.R. 1901=26 P.R. 1901, 161 P.L.R. 1901=13 P.R. 1902, 65 P.L.R. 1902=50 P.R. 1902.

See CUSTOMS — PUNJAB — MISCELLANEOUS, 111 P.L.R. 1903, F.B.=48 P.R 1903, F. B., 145 P.L.R. 1903=86 P.R. 1903.

Property dedicated to idol—Power to dispose of it by will—Mohunt appointing trustees and Pujaris by document, effect of—*See* DEBUTTER PROPERTY, 1 Ind. Cas. 216.

Will—continued.

——1.—**General**—*continued.*

See DECLARATORY DECREE, SUIT FOR—GENERAL, 23 A. 405, P.C. = 5 C.W.N. 895 = 28 I.A. 136.

Nuncupative will—Suit for declaration of its nullity, when lies—*See* DECLARATORY DECREE, SUIT FOR—WHEN DECLARATORY SUITS LIE, 1 A. 688, P.C. = 2 C.L.R. 193 = 5 I. A. 87.

Left by deceased—Suit against estate of deceased—Executor not made party to suit—Effect of decree—*See* DECREE—MISCELLANEOUS, 6 Ind. Cas. 627 = 14 C.W.N. 1041 = 12 C.L.J. 561.

See DEED—CONSTRUCTION OF DEEDS, 21 M. 299 = 25 I.A. 84, P.C.

Instruments of compromise and partition excluding possible question between parties as to the effect of words in—Under which they took their rights—*See* DEED—CONSTRUCTION OF DEEDS, 20 C. 373, P.C. = 20 I A. 35.

Deed, construction of—Will or settlement—*See* DEED—CONSTRUCTION OF DEEDS, 20 M.L.J. 519 = 8 M.L.T. 139 = 7 Ind. Cas. 357 = 33 M. 304.

See ESTOPPEL—STATEMENTS AND PLEADINGS, 2 Agra 171.

Registered copy, admissibility of—*See* EVIDENCE—SECONDARY EVIDENCE, 12 C.P.L.R. 130.

See EVIDENCE—MISCELLANEOUS, 5 W.R. P.C. = 61, 1 M.I.A. 494.

Certified copy of, taken from the records in the Ceylon registration office—Inadmissibility of as secondary evidence of will—*See* EVIDENCE ACT, 1872, s. 74 (1), (iii), 23 M. 499 = 10 M.L.J. 310.

See EVIDENCE ACT, 1872, s. 115, 4 O.C. 408.

See GIFT, 23 B. 131.

Guardian appointed by—Application by another person for certificate of guardianship—*See* GUARDIANS AND WARDS ACT, 1890, ss. 7 (3), 13, 48, 17 B. 560.

Effect of adoption on will—*See* HINDU LAW—ADOPTION, 5 W.R. P.C. 102.

Posthumous son, rights of, not alterable by—In favour of adopted son—*See* HINDU LAW—ADOPTION, 12 B. 105.

Hindu Law — Mitakshara — Joint Hindu family—Power of co-parcener to dispose of undivided share by will and gift—Conflict between Madras and Bombay High Courts—*See* HINDU LAW—ALIENATION, 7 C.L R. 320, P. C. = 5 B. 48 = 7 I A. 181.

Capacity of grantee to dispose of grant by will—*See* HINDU LAW—GIFT, 4 C. 23, P.C. = 3 C. L.R. 339 = 5 I.A. 138.

Oral will—Proof—Burden of proof — *See* HINDU LAW—INHERITANCE, 6 Ind. Cas. 210.

Will—continued.

——1.—**General**—*continued.*

Question whether property of testator was ancestral or self-acquired—Evidence—Statement in will—Conduct of testator's son—*See* HINDU LAW—JOINT FAMILY, 27 M. 228.

Direction in husband's—Regarding residence of widow in family house, how far binding—*See* HINDU LAW—MAINTENANCE, 14 B. 490.

Property bequeathed to idol—Deposition of high priest—Act of State—Foreign power—Effect on property situated outside foreign State—Power of appointment under Will—*See* HINDU LAW—RELIGIOUS ENDOWMENTS, 17 B. 600.

By a Mohunt—*See* HINDU LAW—RELIGIOUS ENDOWMENTS, 8 W.R. P.C. 25 = 11 M.I. A. 405.

See HINDU LAW—REVERSIONERS, 29 C. 260 = 6 C.W.N. 267.

Suit to set aside will—*See* JURISDICTION—CAUSES OF JURISDICTION, A.W.N. 1883, 128.

Administration with will annexed—Lost will—*See* LETTERS OF ADMINISTRATION, 8 C. 864.

Directions in—Void for uncertainty—Intestacy as to residue—Suit by testator's legal heir against executors—Executors whether trustees for specific purposes—*See* LIMITATION ACT, 1908, s. 10, 14 B. 476.

Reference in—By mortgagee, whether amounts to acknowledgment of mortgage—*See* LIMITATION ACT, 1908, s. 19, 16 M. 366 = 3 M.L.J. 191.

Suit to declare a will as forged and beyond the power of the testator to make—Burden of proof—*See* LIMITATION ACT, 1908, arts. 91, 92, 93, 120, 82 P.L.R. 1909 = 88 P.W.R. 1909 = 4 Ind. Cas. 923.

See LIMITATION ACT, 1908, arts. 118, 140, 21 B. 159.

Suit under will for sum as legacy—*See* LIMITATION ACT, 1908, art. 123, 2 Agra 171.

Bequests to dharam void as indefinite—Claim by reversioner to undisposed of property—*See* LIMITATION ACT, 1908, art. 141, 21 B. 646.

Manager of joint estate under Will—Commission—*See* MANAGER—GENERAL, 7 C.L.R. 295, P.C. = 7 I.A. 197.

Capacity of a minor to make a—*See* MINOR—MISCELLANEOUS, 16 M.L J. 135.

Statute of frauds, applicability of, in the case of Parsis—Resulting trust under—Necessity of taking probate—*See* PARSIS, 6 B. 363.

Direction in will to keep properties in trust for several beneficiaries—Suit to recover entire trust properties, whether maintainable by some alone of the beneficiaries—*See* PARTIES TO SUIT—GENERAL, 23 M. 239 = 10 M.L.J. 10.

Will—continued.

——1.—**General**—*concluded.*

Power of maintaining successor in firm, devise by will not exercise of—*See* PARTNERSHIP—PARTNERSHIP WHAT CONSTITUTES, 9 B. 536.

See PRIVY COUNCIL, PRACTICE OF—CONCURRENT JUDGMENTS ON FACTS, 5 W.R. P.C. 57=1 M.I.A. 431.

Appointment of receiver in testamentary suit — Validity of will for *dharmarth* — *See* RECEIVER, 39 P.R. 1908=91 P.W.R. 1908=185 P.L.R. 1908.

See REGISTRATION ACT, 1908, s. 17, cl. (*b*), 20 B. 562.

Presentation of—For registration after death of testator—Inquiry as to disability of testator —*See* REGISTRATION ACT, 1908, ss. 35, 40, 41, 20 M. 254.

Right of hereditary shebait to bequeath his office by—*See* RELIGIOUS ENDOWMENTS, 12 C.W.N. 323=35 C. 226=7 C.L.J. 315.

Suit for construction of—Parties—If party bound—*See* RES JUDICATA—ADJUDICATIONS, 11 C.L.J. 461=6 Ind. Cas. 554.

Suit by widow—Legatee made party—Subsequent grant of letters of administration — Suit by legatee—Whether *res judicata*—Title under will when may be asserted—*See* RES JUDICATA—COMPETENCY OF COURT, 8 Ind. Cas. 28.

Revocation of—Hindu widow, will executed by, in accordance with husband's wish—*See* RES JUDICATA—MATTERS IN ISSUE, 4 O.C. 145.

Suit for possession under will—Will found invalid—Suit for declaration of reversionary heirship—*See* SPECIFIC RELIEF ACT, 1877, s. 42, Ill. (*e*), A.W.N. 1881, 93.

See SUCCESSION CERTIFICATE ACT, 1889, ss. 1 (4), 6 (*d*), 7 (1), 18 B. 608.

Procedure to be adopted when will upset—Circumstances establishing Hindu will—Grant of succession certificate where oral will set up—*See* SUCCESSION CERTIFICATE ACT, 1889, ss. 1 cl. (14), 7, cl. (3), 6 A.L.J. 171=31 A. 236=2 Ind. Cas. 213.

Establishment of charity under—Trust outside jurisdiction—Settlement of scheme—Duty of Court—*See* TRUST, 18 B. 551.

——2.—**Attestation.**

(1)—*Succession Act* (X *of* 1865), *s.* 50, *cl.* 3—*Attestation—Initials of witnesses.*—There is no authority for the proposition that initials are not a signature. If the attesting witnesses affix their initials at the time of witnessing the execution of the will, it is a sufficient compliance with the terms of s. 50 of the Indian Succession Act. AMMAYEE v. YALUMALAI, **16 M. 261.** [*R.*, 1 N.L.R. 14.]

Will—continued.

——2.—**Attestation**—*continued.*

(2)—*Succession Act* (X *of* 1865), *s.* 50—*Will—Witnesses, whether can affix their marks in attestation.*—A marked distinction is drawn, in s. 50 of the Act, between the required action of the testator and that of the attesting witnesses. The former may sign or affix his mark, but the latter must sign the will, as opposed to mere affixing a mark. D. FERNANDEZ v. R. ALIVES, **3 B. 382.** [*F.*, 5 C. 738, 6 C. 17=6 C.L.R. 303, 11 C. 429; *D.*, 15 M. 261, 1 N.L.R 14.]

(3)—*Succession Act* (X *of* 1865), *s.* 50 *Hindu Wills Act* (XXI *of* 1870), *s.* 2.—Attestation of testatrix by mark and identification, before Registration Officer, by witnesses, who had seen the testatrix affixing her mark, are sufficient for grant of probate. *In the goods of* ROYMONEY DOSSEE, **1 C. 150.** [*F.*, 6 C. 17; *D.*, 11 C.L.R. 359=9 C. 226.]

(4)—*Will—Attestation by witnesses, valid mode of—Indian Succession Act*, 1865, *s.* 50.—Cl. 13, s. 50 of the Indian Succession Act, prominently makes a marked distinction between the action of the testator and that of the witnesses, as regards the mode of their respective signatures; so that the direction therein contained regarding the *signing* of a will by witnesses is not satisfied by their affixing their *marks* but they must *sign*, to give validity to their attestation. (13 B.L.R. 392, *Diss*; 3 B. 382, *F.*) [*Doubted*, 15 M. 261; *D.*, 1 N.L.R. 14.]. Where, on a presentation of a will by a testator before a Registrar, the testator admits his signature on it and is identified before the Registrar, and both the Registrar and the identifier sign on the will, testifying to the testator's admission of his signature, it would be sufficient attestation under cl. 3 of s. 50 of the Indian Succession Act. NITYE GOPALSIRCAR v. NAGENDRA NATH MITTER MOZUMDAR, **11 C 429.** [*F.*, 6 C. 17 27 C. 169; *D.*, 26 C. 246; *R.*, 16 C. 19.]

(5)—*Act* X *of* 1865, *Part* VIII—*Will—Directions—Imperative—English Law.*—Part VIII of Act X of 1865 enacts that every testator except persons permitted to make privileged Wills, *must* execute his will according to the rules thereinafter prescribed. The language used there is not merely declaratory but imperative, and, unless the prescribed rules are observed, the Court cannot recognize the instrument as a Will. The words "in the presence of" in cl. 3 of s. 50 of Act X of 1865, may receive the same construction which they have received in the English Courts in decisions upon the English Wills Act, but they cannot receive a larger interpretation. ESAIAS v. GABRIEL, **3 N.W.P. 32.**

(6)—*Indian Succession Act* (X *of* 1865), *s.* 50—*Testator Competent witness—Attestation by testator.*—When the testator himself signs the Will, two witnesses are necessary who must have seen the testator sign, and who afterwards must sign in the presence of the testator.

Will—continued.

——2.—**Attestation**—*continued.*

When the testator does not himself sign, but some other person signs in his presence and by his direction, then, besides this other person, who has so signed at the request of the testator, there must be two witnesses. In other words, when the testator does not himself sign, but asks some one else to sign for him, there must be three persons in addition to and besides the testator himself. *In the goods of* GRISH CHUNDER BANERJEE v. HEMLOTA DEBI, **9 C. 226=11 C.L.R. 359.** (1 C. 150, 6 C. 17=6 C.L.R. 303, *R.*)

(7)—*Attestation of will—Attesting witnesses must sign after testator—Indian Succession Act,* s. 50—The signatures of the attesting witnesses to a will, required by s. 50 of Act X of 1865, must be affixed *after* the testator has signed or affixed his mark. *Quære.* Whether a marksman can variably attest a will; BISSONATH DINDA v. DOYARAM JANA, **5 C. 738=5 C.L.R. 565.** (3 B. 382, *R.*) [*F.*, 6 C. 17=6 C.L.R. 303.]

(8)—*Attestation of will—Succession Act* (X *of* 1865), s. 50—*Sufficient attestation under the section, what would be.*—The two attesting witnesses to a will must, under s. 50 of the Succession Act, sign their names *after* the testator shall have executed the will. (5 C. 738, 3 B. 382, *F.*) [*F.*, 27 C. 169; *R.*, 11 C.L.R. 359, 9 C. 226.] If, on admission by a testatrix of her signature on the will before a Registrar of Assurances and on her identification before the Registrar by one of the attesting witnesses, both the Registrar and identifying witness sign their names as witnesses to the admission, it would be sufficient attestation under s. 50 of the Succession Act. HURRO SUNDARI DABIA v. CHUNDER KANT BHUTTACHARJEE, **6 C. 17=6 C.L.R. 303.** (1 C. 150, *F.*) [*F.*, 11 C. 429, 16 C. 19, 27 C. 169; *R.*, 4 O.C. 408; *Doubted*, 76 P.L.R. 1905.]

(9)—*Act* XXV *of* 1838, *s.* 7—*Both witnesses to be jointly present and attest will.*—The 7th section of the Indian Wills Act, 25 of 1838, enacts "that no will shall be valid unless it shall be in writing, and executed in manner hereinafter mentioned (that is to say), it shall be signed at the foot or end thereof by the testator, or by some other person in his presence and by his direction, and such signature shall be made, or acknowledged, by the testator in the presence of two or more witnesses, present at the same time; and such witnesses shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary." A testator signed his will in the presence of a witness, who subscribed it in his presence; and sometime afterwards, upon the arrival of another witness, the testator, in the joint presence of the former witness, and the other subscribing witness, acknowledged his subscription at the foot of the will. The second witness then subscribed the will, and the 1st witness, in his and the testator's presence, acknowledged his subscription, but did not re-subscribe. *Held*, by the Judicial Committee

Will—continued.

——2.—**Attestation**—*continued.*

(affirming the decision of the Supreme Court at *Calcutta*), that the requirements of the Act had not been sufficiently complied with; it being necessary that both witnesses should be jointly present at the same act of the testator, and jointly subscribe it in his presence. CASEMENT v. FULTON, **3 M.I.A. 395=5 Moo. P. C. 130=1 Sar. 293.**

(10)—*Will—Attestation—Acknowledgment of testator.*—Attestation of a Will, though made by a witness who did not see the testator sign the Will, would be a good attestation if made with a knowledge on the part of the witness that he was attesting what the testator had written and that his acts made known to the witness the testator's personal acknowledgment of having signed the paper MAJOR S. B. GOAD v. DAVID COLYERS, **33 P.R. 1876.**

(11)—*Hindu Wills—Attestation by one witness—Validity.*—A Will to which there is only one attesting witness cannot be acted upon and cannot be taken cognizance of by a Civil Court. HURREE DOSSEE v. WOOMACHURN DUTT, **20 W.R. 255.**

(12)—*Hindu Wills Act* (XXI *of* 1870), *s.* 2, *cls.* (*a*), (*b*)—*Indian Succession Act* (X *of* 1865), s. 50—*Will—Attestation of two witnesses, necessity of.*—The Hindu Wills Act, 1870, applies s. 50, of the Indian Succession Act, 1865, only to those Wills that are mentioned in s. 2, cls. (*a*) and (*b*) of the former Act. And, therefore, an application for probate in respect of a Will of a Hindu not mentioned in s. 2, cl. (*a*) or (*b*) of the Hindu Wills Act, cannot be rejected on the ground of want of attestation of the Will by two witnesses. BAPUJI v. JAGANNATH, **20 B. 674.**

(13)—*Will—Signature of testator—Succession Act.*—The person making the signature of a will for the testator, is not competent as an attesting witness of its execution. AVABAI v. PESTANJI NANABHAI, **11 B.H.C. 87.**

(14)—*Will—Proof of execution—Denial of attestation by attesting witness—Proof of attestation by other evidence.*—Where the attesting witness to a Will, in respect of which probate was applied for, denied all knowledge of the Will or his attestation to it, the Will could be proved by other evidence to the effect that the attesting witness did not speak out the truth and that he did in fact attest the Will. NUBO KISHORE DOSS v. JOY DOOGA DOSSEE, **22 W.R. 189.**

(15)—*Blindman's will—Attestation—Will of Pardanishin lady.*—It is not absolutely necessary that the testator should actually see the witnesses who attest the will, because a blind man may execute a will. In England if a blind man is so placed as, if he had not been blind, he could have seen the witnesses, these witnesses would be held to be in his presence within the meaning of the law. Where in the case of a will by a Pardanishin lady, there were two attesting witnesses, one of whom the testatrix

Will—continued.

——2.—**Attestation**—*concluded.*

could see and could be seen by him, and the other witness was so placed behind a curtain that neither could he see, nor could be seen by, the testatrix, *held* that both witnesses were sufficiently in the presence of the testatrix to make their attestation valid. HORENDRA NARAIN ACHARJI CHOWDHRY v. CHANDRA KANTA LAHIRI, **16 C. 19.** [*D.*, 20 C. 78 ; *R.*, 4 O.C. 408, 13 O.W.N. 40.]

(16)—*Forged attestations, effect of.*—The alteration of an instrument renders it invalid as the foundation of a suit by a party who has altered it, or in whose custody it was when altered, but it does not render the instrument void for all purposes, and the altered instrument may be used as proof of some right or title created by, or resulting from, its having been executed. Effect, therefore, may be given to a will, notwithstanding the fact that some of the attestations to it were recently added and were not *bona fide.* PARAMMA v. RAMACHANDRA, **7 M. 302.** [*R.*, U.B.R. 1892—1896, Vol. II, 593.]

——3.—**Construction.**

(1)—*Will—Test — Irrevocability.*—In ascertaining whether a document is a Will or not, one of the tests is to ascertain whether the document is revocable or not. The irrevocability of a document is inconsistent with its being a Will. Where a non-testamentary instrument is stamped and registered, it shows that the parties to it did not regard it as a Will. MUSSTT. SITA KOER v. MUNSHI DEO NATH SAHAY, **8 C.W.N. 614 = 3 C.L.J. 370.** [*R.*, 36 C. 149 = 13 C.W.N. 291 ; *D.*, 3 Ind. Cas. 380 = 10 C.L.J. 644.]

(2)—*Will, document whether a—Construction—Operation after death—Revocability.*—A document which contains directions regarding the executant's property after his death, which in certain circumstances may be revoked is a will. Instruments not drawn by professional men should be liberally construed. The document in question in this case would be ineffective as an instrument of transfer of immoveable properties owing to the properties not being specified in it, but could be given effect to if it were a will: *Held*—that the document was a will. RAM MONI DASI v. RAM GOPAL SHAHA, **12 C.W.N. 942.** [*R.*, 36 C. 149 = 13 C.W.N. 1291, 10 C.L.J. 644 = 3 Ind. Cas. 380 = 14 C.W.N. 174.]

(3)—*Will speaks from the date of death—Hindu wills, loss of the original—Admission of testator—Presumption as to destruction and revocation of wills in India and under English law.*—A will must be construed as speaking and taking effect with reference to the state of things in existence immediately before the testator's death. This principle applies to Hindu wills also. Where the original will is not to be found, there is a presumption in English law that it has been destroyed. But the presumption is not so strong in India, as in other countries, where wills are taken greater care of. Where there was no evidence of the destruction of the will by the testator, but the plaintiffs relied on the non-production of the will and the deposition of certain witnesses, who said that the testator had admitted having destroyed the will, *held* that these facts were not sufficient to establish the presumption of revocation. SHIP SABITRI PRASAD v. THE COLLECTOR OF MEERUT, **3 A.L.J. 747 = A.W.N. 1906 295 = 29 A. 82.**

Will—continued.

——3.—**Construction**—*continued.*

(4)—*Will, Interpretation of—Intention of testator.*—In interpreting a Will, regard must be had, not merely to the words used, but to the evident intention of the testator. TARAN SINGH HAZARI v. RAMRATAN TEWARI, **31 C. 89.**

(5)—*Construction—Intention of settlor—Benignant construction.*—In construing deeds and wills, the Court always has regard to the intention of the settlor or testator, and the construction to be applied is a benignant construction. GORDHANDAS v. BAI, RAMCOOVERBAI, **3 Bom. L.R. 857 = 26 B. 449.**

(6)—*Intention of testator.*—In construing a will words cannot be added to give effect to what may be fancied to have been the intention of the testator. GOPAL KRISHNA v. RAMNATH, **5 Bom. L.R. 729**

(7)—*Intention of testator how ascertained—Scope of enquiry — Admission of extraneous evidence.*—In construing a will, the intention of the testator must be ascertained from the language used in the entire will. The true enquiry is not what a testator meant to express ; but what the words used to express, extrinsic evidence cannot be received as evidence of a testator's intention, outside and independent of the written words employed by him. SRINIBASH DAS v. MONMOHINI DASI, **3 C.L.J. 224.** (6 M.I.A. 526, *F.*) [*R.*, 7 C.L.J. 291.]

(8)—*Interpretation of—Bequest of income of immoveable property*—Corpus.—In every case in construing a will, it is the duty of the Court to ascertain what the intention of the testator was and to give effect to the intention. It is a well-established rule of construction that a gift of the rents and profits of property is equivalent to a gift of the property itself; also that a gift of the income of property will also carry the legal and beneficial interest in the property itself. DURGA DEVI v. DUNI CHAND, **2 A.L.J. 568.**

(9)—*Construction of will—Rules for guidance.*—In construing the will of a Hindu, the Court may take into consideration the ordinary notions and wishes of Hindus as regards the devolution of property. Ordinarily their ideas are repugnant to giving a female a power of alienation over ancestral immoveable property. Therefore unless there is a clear indication of intention to give such power, a female devisee

Will—continued.

—3.—**Construction** —*continued.*

will only take a life-estate. RALLIA RAM v. MUSST VED KAUR, **27 P. R. 1898.** [*R.*, 93 P.R. 1905 = 162 P.L.R. 1905.]

(10)—*Will—Construction—Admission.*—The scope and intent of wills, when disputed, must be decided and interpreted by Courts of Law, aud not by admissions, which persons not versed in such matters, or badly advised, or wholly ignorant of the precise phraseology employed may be induced to make through third parties. MRS. MARY POGOSE v. MUSSAMUT CHAMARINI BIBEE, **W.R. 1864, 336.**

(11)—*Test to be adopted in construing will—Technical words—Bequest of all a man's property.*—In construing a will, the test to be applied is :—What did the testator mean having regard to the words he used. In applying this test, effect must be given to the principle that "technical words of known legal import must have their own legal effect, even though the testator uses inconsistent words, unless they are of such a nature as to make it perfectly clear that the testator did not mean to use the technical terms in their proper sense." Where there has been a devise or bequest of all a man's property, the generality of the disposition cannot be cut down, unless the intention that it should be so cut down is clear. MARY HARRIETT ANNE WILSON v. GEORGE OAKES, **18 M.L.J. 331 = 31 M. 283 = 4 M.L.T. 295.**

(12)—*Construction of one will by reference to expressions in another.*—To construe one will by reference to expressions of more or less doubtful import to be found in other wills, is for the most part an unprofitable exercise. NORENDRA NATH SIRCAR v. KAMALABASINI DASI, **23 C. 563 = 23 I A. 18, P.C. = 6 M.L.J. 71 = 6 Sar. 667.** [*R.*, 5 M.L.T. 103 = 3 Ind. Cas. 311, 25 C. 239, 25 B. 202, 3 O.C. 325, 28 C. 517 = 5 C.W.N. 640, 25 M. 244, 6 Bom. L.R. 131, 74 P.R. 1906 = 137 P.L.R. 1906, 29 A. 685 = 4 A.L.J. 605 = A.W N. 1907, 235 = 6 Cr.L.J. 117, 34 C. 999 = 11 C.W.N. 889 = 6 C.L.J. 410, 35 C. 34 = 11 C.W.N. 983 = 6 C.L J. 273; *D.*, 25 M. 457; *F.*, 3 C.L.J. 224.]

(13)—*Hindu will, Construction of—Clauses antagonistic to each other.*—The clauses of a will, which are intended to provide for different circumstances, must not be read together and reconciled and construed as mutally explanatory of each other. DAMODARDAS TAPIDAS v. DAYABHAI TAPIDAS, **2 C.W.N. 417, P.C. = 22 B. 833 = 25 I.A. 126 = 7 Sar. 308.**

(14)—*Executed by Taluqdar—Construction of document—Threats and undue influence—Revocation of will—Application of provisions of the Indian Succession Act—Oudh Estates Act, ss. 2 and 19—Succession Act, s. 57.—Held*, that a portion of a document may operate as a will although another portion may have nothing to do with the will. *Held*, further, that the provisions of the Indian Succession Act which have been made applicable to the wills of Taluqdars and grantees apply to all the wills

Will—continued.

—3.—**Construction**—*continued.*

and codicils executed by them and not to any particular class of such wills and codicils. LACHMAN SINGH v. UMRAO SINGH, **11 O C. 102 (B).**

(15)—*Will of a talukdar—Construction.*—Where a document executed by a talukdar, purporting to bequeath impartible properties to which he had succeeded, was registered as a will, provided for contingencies that were not ascertainable or might not be ascertained till his death (*e.g.*)., the contingency of having a child, which he did not have at the time, and that of leaving a widow surviving him), and did not purport to give to anybody any possessory or present interest till his death, *held*, those were very strong *indicia* of a testamentary character, and that the instrument was a will (within the Oudh Estates' Act of 1869) and not a transfer *inter vivos*. THAKUR ISHRI SINGH v. THAKUR BALDEO SINGH, **10 C. 792, P.C. = 11 I.A. 135 = 13 C.L.R. 418 = 4 Sar. 528.** [*R.*, 8 C.W.N. 614 = 3 C.L.J. 370.]

(16)—*Act X of 1865, s.3—Probate—Gift deed—Document partly testamentary—Construction.*—If one part of the instrument is testamentary in its character, it seems only probable that the rest, if the language is capable of that construction, is intended to be testamentary also, and when nothing is found in the earlier parts of the document which is inconsistent with the supposition that the arrangements there made were to take effect at the death of the person executing it, then the documents ought to be admitted to probate as a Will. *In re* KOMOLA KANT BISWAS, **4 C.L.R. 401.**

(17)—*Document—Reference in the will—Testamentary document.*—Where a document is referred to in a will with a view of confirming it, it is confirmed and takes effect as a testamentary document. MUSABHOY v. YAKUBBAI, **7 Bom. L.R. 45 = 29 B. 267.**

(18)—*Two species of property—Descriptions—Will—Construction.*—Where a given subject is devised and there are found two species of property, the one precisely corresponding to the description in the deviser, and the other not completely answering thereto, the latter will be excluded. TULSHA v. MATHURAPURI, **6 Ind. Cas. 794.**

(19)—*Will—Construction of—Two species of property devised—Property not strictly corresponding to description in Will to be excluded—Presumption.*—It is a well settled canon of construction that, where a given subject is devised and there are found two species of property, the one precisely corresponding to the description in the devise, and the other not completely answering thereto, the latter will be excluded. Certain property described as being in the testator's separate possession was bequeathed to appellant. The testator was entitled to certain *shamlat pattis*, in the village which bore distinct numbers from those specifically given. These latter were owned

Will—continued.

——3—**Construction**—*continued.*

by proprietors of *asli pattis* in common and were not assessed to revenue. The former were *asli pattis* and were assessed to revenue. The will contained no words such as "with the appurtenances" or "lands appertaining thereto" and specifically described the *asli pattis*. *Held*, that the *asli pattis* precisely corresponded with the description in the Will, and *shamlat pattis* in no way answered to that description, and, *a fortiori*, the latter were excluded. TULSHA v. MATHURAPURI, **7 A.L.J. 1093.**

(20)—*Construction*--Persona designata—*Reason and motive of gift—"Adopted son"—Description.*—Where a Hindu testator bequeathed his property to "Lalta Prasad, my adopted son," *held*, in the absence of anything in the will to show that the fact of the adoption of the devisee was the motive or the reason for the gift, that the language of the gift was to be interpreted in its ordinary meaning as a gift to Lalta, Prasad as a *persona designata* who was entitled to take under it, even though the adoption was not proved. LALTA PRASAD v. SALIG RAM, **5 A.L.J. 626=A.W.N. 1908, 249=4 M.L.T. 442 =31 A. 5=1 Ind. Cas. 555.** (3 I.A. 253=26 W. R. 91, *F.*)

(21)—*Grant of portion of estate — Right of selection.*—Where a testator leaves a kani out of a certain land to a certain person, the whole land measuring more, the legatee has the right of selection, and is entitled to sue for a specified portion of the estate. NARAYANASAMI GRAMANI v. PERIATHAMBI GRAMANI, **18 M. 460.**

(22)—*Will—Construction.*—Construction of a Will and the meaning to be attached to certain words used therein relating to real and personal property explained. MEER HOOMAY GOON JAH v. TOWFEE-KINNISSA BEGUM, **W.R. 1864, 69.**

(23)—*Contingent gift—Construction.*—Where words of contingency form part of the description of the class of persons to take (*e. g.*, a gift to those "who shall attain the age of twenty-one"), the words must receive their natural construction, and no estate would vest in any one, in the example, till he attains the age. In the absence of something pointing to a different construction, or something in the will inconsistent with the literal construction, a Court would not be justified in adopting any but the literal construction. In the case of words of contingency occurring in the description of the persons to take, a mere gift over is not sufficient to change their meaning. BALLIN v. BALLIN, **7 C. 218=8 C.L.R. 28.**

(24)—*Will, Construction of—Demonstrative legacy.*—Where the representatives of a testatrix have refused payment of legacies, or gifts of stipends, on the ground that she had no power to dispose of the fund out of which the will must be construed to direct their payment: *held*, on consideration of the whole will, that the words of the gift were large enough to charge the annuities or stipends in question upon the Government notes held by the testatrix, and also upon the rest of her moveable property: and that if the words of the will were to be taken in a more restricted sense, the gift of these annuities or stipends must be regarded as a demonstrative legacy, and in that view they would be payable out of the testatrix's general estate, in the event of the failure of the particular fund pointed out for their payment. SAHIB MIRZA v. UMDA KHANAM, **19 C. 444, P.C.= 19 I. A. 83=6 Sar. 180.**

Will—continued.

——3.—**Construction**—*continued.*

(25)—*Rule of double portions—Hindu will.*—According to the rule of English law as to double portions, when the two provisions are of the same nature or there are but slight differences the two instruments afford intrinsic evidence against a double provision; but when the provisions are of a different nature the two instruments afford intrinsic evidence in favour of a double provision. This rule may well be borne in mind as a principle of equity, justice and good conscience, in ascertaining the intention of a Hindu testator from the terms of his will. JUGJIVANDAS v. BRIJDAS, **7 Bom. L R. 299.**

(26)—*General charitable intention—Charity not established—Accumulated interest, if part of the residue—Blood relations, right of, to have the administration of charity*—Cypres doctrine.—Where a testator made a bequest in the following words "(1) I give, in charity, twelve to sixteen thousand rupees, for building a lower roomed house and premises, for the establishment of a charitable dispensary, and fifty thousand rupees for carrying on the said dispensary. (2) The executors shall demarcate one portion of the joint garden-house we have at R as my separate share, and erect the buildings, thereon, and after purchasing Company's papers for fifty thousand rupees, shall, out of the interest thereof, continue to carry on the work of the charitable dispensary. On to the said dispensary they shall put up a sign board of stone with my name written on it, and they shall likewise have the power of paying over the said amount, and making over the charge of carrying on the work of the said charitable dispensary into the hands of Government," but the dispensary was not established, and interest had accumulated on the fund. *Held*, that cl. (1) indicated a general charitable intention of the testator; that, applying the *cypres doctrine*, the general charitable intention should not fail to be carried out, merely because the executors are all dead and the particular land on which the testator desired the dispensary to be erected is not available for the purpose; that cl. (2) did not show any intention on the part of the testator, that this particular charity is to remain under the administration of any of the testator's relatives; that the mere fact that the charity has not been established earlier does not render the interest accrued on the fund, applicable as a portion of the

Will—continued.

——3.—**Construction**—*continued.*

residue of the estate. But, it forms part of the capital for the purpose of carrying out the charity. ADVOCATE GENERAL OF BENGAL v. BELCHAMBERS, **36 C. 261=1 Ind. Cas. 944.**

(27)—*Wills—Bequest to object not answering description in will — Expression of general charitable intention in favour of poor people of a specified nation living at a particular place—Application of* cypres *doctrine.*—The interest of a Government Promissory Note was bequeathed by a testatrix to "the Calcutta Armenian Orphan's College Funds for the relief and enjoyment of the poor families, widows, orphans and schools of the Armenian nation." There was no institution in Calcutta answering to the description of "The Calcutta Armenian Orphan's College Funds." But there were at Calcutta two charitable institutions which provided for the relief and enjoyment of the poor families, widows, orphans and schools of the Armenian nation, namely, the Armenian Church called "St. Nazareth's Church" and the Armenian Philanthropic Academy. The funds of the former were exclusively appropriated to the relief of the poor families, widows and orphans of the Armenian nation resident in Calcutta and the funds of the latter were devoted to the purpose of gratuitously instructing and educating the poor and orphans of the Armenian nation resident inCalcutta,and also of providing gratuitously a limited number of such poor and orphans with board, lodging and raiment. The warden of St. Nazareth's Church and the Managers of the Armenian Philanthropic Academy applied for payment to them of the legacy. *Held*, that it was clear that the testatrix in the b quest in question had a general charitable intention in favour of the poor families, widows, orphans and schools of the Armenian nation *at Calcutta*, and not a special intention to benefit any particular institution. In the circumstances of the case, the *cypres* doctrine applied. The original amount and the accumulated interest were to remain invested as before. The interest accruing due on the entire amount was directed to be paid half-yearly to the warden of St. Nazareth's Church and the Managers of the Armenian Philanthrophic Academy in moieties. LONGBOTTOM v SATOOR, **1 M.H.C. 429.** [*Appr.*, 26 M. 268.]

(28)—*General charitable bequest — Cypres doctrine.*—Where it was found that the object of the testator was to provide education for two or more boys (at St. Paul's School, Calcutta), such boys to be natives of Calcutta, children of poor and indigent parents or fatherless children, of the Armenian or other Christian religion, *held*, on the removal of the school from Calcutta to Darjeeling, that the gift did not lapse, being a general charitable bequest and that it must be executed *cypres.* MALCHUS v. BROUGHTON, **11 C. 591.**

(29)—*Will—Construction—Validity of bequest —Gift to superstitious uses.*—A bequest by a

Will—continued.

——3.—**Construction**—*continued.*

Roman Catholic of Portuguese descent, born and domiciled in Calcutta, for the performance of masses, is not a gift to superstitious uses. DAS MERCES v. CONES, **2 Hyde 65.**

(30)—*Superstitious uses in India.* — The English rule of law which prohibits the bequest of money to superstitious uses has no application in this country. A bequest for the giving of alms for the testator's spiritual benefit is void because the object is both uncertain and not purely charitable. JOSEPH EZEKIEL JUDAH v. AARON HYE NUSSEEM EZEKIEL JUDAH, **5 B.L R. 833.** [*R.*, 15 M. 424, 31 C. 166=8 C.W N. 273, 5 Bom. L.R. 1010, 33 B. 122=10 Bom. L.R. 417.]

(31)—*Purposes of popular usefulness or for purposes of charity—Bequest for uncertainty—Charitable purposes if mixed with other indefinite purposes, the whole gift fails.*—Where in a will the following clause occurred: As to whatever immoveable (and) moveable (property) in cash belonging to me may be in excess or may remain over as surplus after a deposition shall have been made in accordance with what is stated in the clauses above written my above-mentioned six executors are to make use of the same in such manner as they may unanimously think proper for purposes of popular usefulness of 'charity.' And I give to them *i.e.*, my above-mentioned trustees full authority to use (the same) in that manner. *Held*, that the bequest "for purposes of popular usefulness or for purposes of charity" was void for uncertainty. *Held*, also, that the "purposes of popular usefulness" was different from "purposes of charity" and the word "or" was disjunctive. Where charitable purposes are mixed up with other purposes of such a shadowy and indefinite nature that the Court cannot execute them, such as 'charitable or benevolent or 'charitable or philanthropic' or 'charitable or pious' purposes or where the description includes purposes which may or may not be charitable and a discretion is vested in the trustees, the whole gift fails for uncertainty. TRIKUMDAS v. HARIDAS, **9 Bom. L. R. 560=31 B. 583.**

(32)—*Dedication of property to the worship of* Shiva *and for* Darma Sabha—*Executor to receive surplus after defraying expenses—Good and valid dedication—Intention of testator only test.*—A testator bequeathed his property in the following terms:—" For the worship and puja of *Siva Thakur* and *Dharma Sabha*, the house of which, the boundaries and descriptions are given below and in which the *Siva Thakur* has been established and the income derived from the promissory notes of the value of Rs. 10,000 out of those numbers, of which the numbers are given below, shall be devoted to the worship and *puja* of *Shiva Thakur* and the repair of the said house and, whatever remains, it may be used by the principal executor for meeting the family expenses. The aforesaid house shall

Will—continued.

—— 3.—**Construction**—*continued.*

not be transferred by sale, mortgage, gift or by any other way. The principal executor may live in it and may let it out on rent, provided that such act does not interfere with the *Sabha* and *puja* of *Shiva Thakur* and the *Dharma Sabha*: and the aforesaid sum of Rs. 10,000 which is set aside for the service of *Shiva Thakur* shall be kept in such a way that it may not be destroyed on any account whatever." *Held*, that these words constituted a valid dedication for religious purposes. *Held* also that the test in each case is what was the intention of the testator, whether the dedication made by him was real and *bona fide* or colourable and illusory. BENODO BEHARI MAULIK v. SITA RAM NAIK. DAJI, KALIA, **6 A.L.J. 444 = 1, Ind. Cas. 666.** (25 C. 172, *R.*)

(33)—*Rule against perpetuities—Trust for masses--Vesting of bequest—Marriage settlement.*—The general rule is that all gifts, whether of real or personal property, which purport to appropriate property to a certain purpose in perpetuity, are void as contrary to public policy, unless the purpose be a charitable one. A charitable purpose is one which is for the benefit of the public or a section of the public, and not for the private benefit of the donor or his family. A gift or bequest in perpetuity, for masses for the soul of the donor or testator, is not for a charitable purpose and so is void. [*R.*, 18 M. 201, 10 Bom. L.R. 417 = 33 B. 122, 31 M. 187 = 18 M.L.J. 158.] When a testator leaves a bequest to his daughter and on her dying childless, there is a provision in the will by which a portion of the legacy is to be given to the husband: the husband takes a vested interest in that portion of the legacy, and a subsequent settlement in contemplation of marriage cannot affect his rights. THE MOST REVEREND JOSEPH COLGAN v. THE ADMINISTRATOR GENERAL OF MADRAS, **15 M. 424.**

(34)—*Bequest—Masses for the deceased in Calcutta.*—A bequest for the performance of masses for the deceased in Calcutta, was held valid. ANDREWS v. JOAKIM, **2 B.L.R. O.C. 148.** (2 Hyde, 65. *F.*) [*F.*, 5 Bom. L.R. 1010; *Appr.*, 15 M. 424, 10 Bom. L.R. 417.]

(35)—*Religious endowment—Mohunt, competency of, to appoint successor by will—Direction in will to appoint successor—Construction of will—Rules regulating Mohunts and their offices, derivable from established custom and usage—Plaintiff claiming Mohuntship, duty of, to establish his title to office.*—A, the Mohunt of a wealthy endowed religious institution, made his last will addressed to B reciting that B should succeed as the next Mohunt and have his name entered as proprietor in the records in substitution of that of the testator and take charge of all the properties, and, as Mohunt of the institution, perform the religious duties in the usual way. The will also directed that on

Will—continued.

——3.—**Construction**—*continued.*

B, finding himself incapable of fulfilling the above duties, he should appoint in his place C, the present appellant, as Mohunt. *Held*, on the true construction of the will, that it did not give the appellant an absolute, positive and unqualified right at any time to the Mohuntship even on the incapacity of B to perform the duties of Mohunt. Until B became incapable, no trust or duty was even suggested, and even when he should actually become incapable, it cannot be put higher than as a gift in the nature of a precatory trust—that is, one requesting B to perform the wishes of the testator and to appoint the appellant as his successor. It was unnecessary for their Lordships to consider whether, in point of law, a grant of Mohuntship can be made by any holder of the office with the superadded obligation imposing on the grantee the necessity of following the wishes of the grantor, as to the person whom he is to appoint to be his successor in that office. Their Lordships observed that the only law as to the Mohunts and their offices, functions and duties, was to be found in custom and practice, which was to be proved by testimony; and no evidence had been adduced before their Lordships to show that any such appointment had ever been made in reversion on any former occasion. It had only to be considered whether, upon the case as it stood, the appellant had made out his title. It was not necessary to consider whether he had shown any infirmity whatever in the title of the respondent, but whether he had made out a satisfactory case to entitle him to recover the office and the lands and property belonging to it. Their Lordships therefore decided, both on the consideration of the will and on the evidence brought before them, that the appellant had completely failed in his attempt to set up his own title, and that, consequently, the decision of the Court below, to the effect that he had failed to establish any title of his own, ought to be affirmed. GREEDHAREE DOSS MOHUNT v. NUNDOKISHORE DOSS MOHUNT, **8 W.R.P.C. 25 = 11 M.I.A. 405 = 2 Suth P.C J. 86 = 2 Sar. 306.** [*F.*, 9 C. 766, P.C. = 13 C.L.R. 30; *Appr.*, 1 M. 235, **P.C.** = 4 I.A. 76; *R.*, 1 I.A. 209, 5 C.L.R. 73, 8 B. 432, 11 B. 185, 10 M. 375, 31 M. 293, 23 B. 131, 7 C.W.N. 145, 5 C.L.J. 360, 8 C.L.J. 499, 11 C.L.J. 2 = 3 Ind. Cas. 408.]

(36)—*Bequest to charity — Construction of Will—Bequest to two charitable objects — One bequest invalid — Effect—Bequest to person named and invalid gift over--Effect.*—Where a Will provided that "after the decease of my wife shall have taken place, my executors shall use for *sadavarat* the rent of the above-mentioned house," and power was then given to sell the house and invest the proceeds and pay the income into the *sadavarat*, *held*, that the testator intended his executors after the death of his wife, to establish a definite *sadavarat* in some definite place with the income of the

Will—continued.

—3.—Construction—*continued.*

house, that it was a good charity, and that therefore there must be an enquiry as to the place at which such *sadavarat* should at the proper time be established, and that a scheme must be prepared for its administration. [*F.*, 12 C.W.N. 1083; *R.*, 3 S.L.R. 185]. Where a Will provided that if the testator's daughters died without issue, the property of his daughters should be used by his executors for *dhuram* and *sadavarat*, *held*, that the gift to the *dhurm* was invalid and that the bequest was valid to the extent of one half in favour of the *sadavarat*. Where a testator by his Will directed that his wife should enjoy during her life the interest of Rs. 4,000 deposited with a firm and that, after her death, the interest should be given to *dhurm*, *held*, that the bequest to *dhurm* was invalid and that, as there was no residuary clause in the Will, the corpus of the Rs. 4,000 being undisposed of, would go to the widow. MORARJI CULLIANJI v. VEN BAI, **17 B. 351.** [*R.*, 8 C.W.N. 653=31 C. 895.]

(37)—*Construction — Bequest, when void for uncertainty—Expression of general charitable intention—Effect —"* Sadavarat *"—Direction in a will "to start a* sadavarat *for the needy"—Effect—Practice—Application of principles of English Law in construction of.*—A bequest not expressive of any definite intention is void for uncertainty; but no part of a will is to be rejected as destitute of meaning, if it is possible to put a reasonable construction on it. So, if a testator has expressed an absolute general intention to give a legacy to a charitable purpose, but has left uncertain the particular mode by which his intention is to be carried into effect, the Court will supply the defect and enforce the charity. (1 C. 303, 17 B. 351, 31 C. 895, *R.*) And if, therefore, the general intentions of the testator are so expressed that the trustees or, failing them, the Court under s. 92, Civ. Pro. Code), can draw up a scheme giving effect to such general intentions, there can be no necessity for holding the bequest bad for uncertainty. "*Sadavarat*" (as admitted by the parties) is charity which takes the form of a periodical distribution, at regular intervals, of money or goods. In directing his trustees "to start a *sadavarat* for the needy," the testator is expressing a general intention to give a bequest to public charity. Since a practical scheme can easily be settled to carry out the testator's intentions, the bequest is not void for uncertainty. (17 B. 351, *N.F.*) It has been the universal practice of all Courts in India to consult and follow English decisions when construing wills. Although the English law is not obligatory upon the Courts in the Mofussil, they ought, in proceeding according to "justice, equity and good conscience," to be governed by the principles of English law applicable to a similar state of circumstances. KISHINBAI v. NOTANDAS, **3 S.L.R. 185.** (9 M. I.A. 307, 11 B.H.C. 36, *R.*)

Will—continued.

—8.—Construction—*continued.*

(38)—*Charitable bequests—General residuary bequest.*—A direction to trustee, by will, to spend suitable sums for certain *sradhs*, for feeding and gifts to Brahmins and the poor, for reading *purans* and for offering prayer to God, is valid and the last clause in the will directing the trustee to spend, on certain other charities, "any surplus" after the expenditure on the previously mentioned bequests, creates a general valid residuary bequest, which would absorb any of the preceding gifts, even if they should happen to be invalid. DWARKANATH BYSACK v. BURRODA PERSAUD BYSACK, **4 C. 443=1 C.L.R. 566.** [*Appr.*, 6 B. 24; *R.*, 14 B. 1, 31 C. 166=8 C.W.N. 273, 12 C.W.N. 1083, 11 C.W.N. 65=34 C. 5.]

(39)—*Charitable devise—Hospital—Provision that property should not be sold.*—A testator, an Englishman by birth and domicile, left his personal property to trustees in trust to pay certain annuities to his son and his daughter, and after bequeathing some pecuniary legacies, devised certain immoveable property to the trustees in perpetuity in trust for the support of hospitals in the North West-Provinces, with directions that the surplus income (if any) from his personalty during the lives of his children, and on the death of either of them, his or her annuity, and on the death of both of them, the whole income of the personalty, should be applied in support of the hospitals. There was also a provision in the will that the property should never be sold. A suit was brought for the construction of the above Will and for declaration of the trusts specified therein. It appeared that the income of the personalty was not more than sufficient, after payment of the legacies, to pay the annuities to the testator's children, and that the immoveable property was greatly in need of repairs and did not produce enough for the support of the hospitals, or to enable the trusts of the Will relating thereto to be carried out. *Held*, that the particular charitable purpose to which the property had been devised in this case, being a hospital, and it having been decided that a hospital had come within the scope of 43 Eliz. c. 4 (*Attorney General* v. *Kell*, 2 Beav. 575 and *University of London* v. *Yarrow*, 3 Jur. N.S. 421, *Relied on*) the devise of the support of the hospitals was good and effect should be given to it. The Mortmain Acts are not operative in India. (1 M.I.A. 175,) *Attorney-General* v. *Stewart*, 2 Merivale 143; *Milford* v. *Regonlds*, 1 Phil 185 (192), *F.*) This being so, it must follow that the Court would carry out a trust of the kind when the subject is the moveable property just as it would if it had been merely personal property. *Held*, also that if the prohibition against sale was a valid one, the Court could not order a sale, merely because it would be advantageous that the property should be sold. But the prohibition of the testator against selling was held to be void as being repugnant to the gift. It was an

Will—continued.

—3.—**Construction**—*continued.*

endeavour on the part of the testator to limit the incident of the property beyond the period authorised by the rule against perpetuities to a greater extent than is needed for the charitable purpose to which he had devoted the property. Notwithstanding such prohibition, the trustees had power to sell, or otherwise alienate the property for the purpose of maintaining the hospitals. BROUGHTEN v. MERCER, **14 B.L.R. 442.**

(40)—*Terms used—Absolutely—Repugnancy in words.*—A will contained a clause which provided that on the happening of certain events, which did come to pass, the property should remain "upon trust and the use of the said trustees absolutely to be expended and used by them for such charitable purposes as they may think fit." *Held*, on a construction of this clause, that, having regard to the words that follow the term "absolutely," it cannot reasonably be taken as conferring an unfettered and unlimited interest on the persons designated as trustees; and that the words used created a valid trust for charitable purposes in the events which had happened. If there be a repugnancy, the first words in a deed and the last in a will shall prevail. This rule has no application where the supposed inconsistencies are in one and the same provision. ADVOCATE-GENERAL v. HORMASJI, **7 Bom.L.R. 236=29 B. 375.**

(41)—*Construction—"Always or for ever," meaning of—Life interest—Perpetual gift.*—The words "always,or for ever" (*Hamesha*) in a will, award, or order of Court or other document, do not *per se* extend the interest given beyond the life of the person who is named. They are not inconsistent with limiting the interest given; but the circumstances under which the instrument is made or the subsequent conduct of the parties may shew the intention with sufficient certainty, to enable the Courts to presume that the grant was perpetual. AZIZ-UN-NISSA v. TASSADUQ HUSAIN KHAN, **5 C.W.N. 569, P.C. =28 I.A. 65=23 A. 324=3 Bom.L.R. 307=11 M.L.J. 160=8 Sar. 54.** (12 I.A. 159, 205, *R.*) [*R.*, 26 M. 202, P.C.]

(42)—*Anna Chattra—Bequest to—Validity of.*—A bequest by a Hindu for the maintenance of an *anna chattra* is not void as being too vague. ADVOCATE-GENERAL v. T. J. STRANGMAN, **6 Bom. L.R. 56.**

(43)—*"Aulad," meaning of, in a will.*—The word "aulad" in a will should be construed in its general sense to include both male and female issue. MUSSAMMAT DHAN DEVI v. MUSSAMMAT MAHAN, **114 P.R. 1900=P.L.R. 1900, p. 143.** (89 P.R. 1892, *D.*; 20 B. 571, *R.*).

(44)—*Meaning of "Bapika Vanshamanthi."*—The testator gave by his will a power to his widow to adopt a son to him from a class described as "*Mara Bapika Vanshmanthi.*" *Held*, on a construction of the expression, that it meant "from amongst my paternal agnates," and not "from the descendants of my father." DAYABAI TAPIDAS v. CHUNILAL HURGOWANDAS, **10 Bom.L.R. 97.**

Will—continued.

—3.—**Construction**—*continued.*

(45)—*Intention—Inappropriate words—"Cash"—Mortgage bonds—Money.*—In construing a will, what the Court is concerned with is to ascertain the intention of the testator, and if it finds that he intended that all his moveable property should pass to the legatee, it should not hesitate to carry out the testator's intention, even though he used an inappropriate word such as "cash." No absolute technical meaning should be given to such a word as "money." PARSANNI v. GHAREEB DAS, **5 A.L.J. 708=A.W.N. 1908, 275.** (5 A.L.J, 519, *R.*)

(46)—*Construction of Will—"Children"—Domicile—Natural injustice—Accretion to property from rents.*—Construing a Will, according to the principles of natural justice, and applying to the word "children" the signification in which the testator used it as gathered from the Will itself, the word "children" was held to include illegitimate children, the offspring of sons, when acknowledged or treated as his children by their putative father. [*F.*, 31 A. 239=A.W.N. 1904, 213; *R.*, 5 B. 154, 23 B. 539, 6 O.C. 306.] Where a testator has an ascertained domicile, the construction of his will must depend on the law of that domicile; but if no particular law is applicable, the will is to be interpreted by the principles of natural justice. [*F.*, 31 A. 239=A.W.N. 1904, 213; *R.*, 5 B. 154, 23 B 539, 6, O. C. 306.] Where by Will the income of certain estates was left to devisees for life, with a gift over of the *corpus* on their death, and a portion of the income instead of being divided among the tenants for life, was applied to the purchase of other estate, *held* that these estates did not pass to the remaindermen, but formed the absolute property of the tenants for life and passed to their devisees. MUSSAMAT F. BARLOW v. SOPHIA EVELINE ORDE, **5 B.L.R. 1, P.C.=13 W.R. P.C. 41=13 M.I.A. 277=2 Suther 324=2 Sar. 540.** [*R.*, 3 A. 91, P.C.=7 I.A. 196=7 C.L.R. 295.]

(47)—*Construction of the word "dharma" in bequests.—Per White, C J.*—The Privy Council decision in 26 I.A 71 must be followed in construing the word "dharma." *Per Subrahmania Aiyer, J*—The word "*dharma*" denotes objects indicated by the terms *ishta* and *poorta*. *Ishta* gifts refer to gifts at the altar in connection with the sacrificial ceremonies and the objects of the gift are as certain as they can be. *Poorta* works include service to fellow beings, such as constructing tanks, wells, temples, feeding, etc. Gifts for "*dharma*" should, therefore, be upheld as intended and understood to be for definite objects known to the people, even were that word devoid of a technical import. PARTHASARATHI PILLAY v. THIRUVENGADA PILLAY, **2 M.L.T. 198=17 M.L.J. 379=30 M. 340.** [*R.*, 14 C.W.N. 18=10 C.L.J. 355=3 Ind. Cas. 642, F.B.]

Will—continued.

—3.—**Construction**—*continued.*

(48)—*Will*—" *Domestic servant*"— *Washerman.*—*Held*, on the evidence, that the plaintiff, a washerman, had failed to prove that he was a domestic servant of the testator so as to entitle him to take a legacy under the clause in the will. BHIM DAS v. UPENDRA MOHAN TAGORE, **9 B.L.R. App. 4.**

(49)—*Domestic servant, scope of the words*—*Will—Construction— Domestic servant.*—The expression " domestic servant " would not be confined to the servants who actually worked in the house, but would include other persons who ordinarily form part of an Indian establishment, such as coachmen, syces, malis, Palki bearers, and gardeners. Suit for the sum of Rs. 1,300 to which the plaintiff alleged he was entitled under the following clause of the will of the late testator in whose service he had been up to the time of his death :—Cl. 12.—" I give and bequeath, to my Sudder Naib and Sudder Mooktear, and to each of my native assistants and writers in the English department of my business and to my other native assistants and servants employed in my zemindary department and munshi and cash departments in Calcutta who shall have been in my actual and constant service ten years and upwards at the time of my death, and to each of my domestic servants in Calcutta who shall have been in my service ten years and upwards at the time of my death, Rs. 100 for every rupee of monthly salary drawn by them from me respectively." The plaintiff in his plaint stated that, in or about 1831, he had been engaged by the testator as sirang of a river steamer belonging to the testator at a monthly salary of Rs. 13, and that he continued in the testator's actual and constant service from the year 1831 down to the day of the testator's death ; that during the time he was in the service of the testator, he was in the habit, by the direction of the testator, of taking his meals on board the steamer and sleeping there, and his duties were to take charge of the steamer as sirang on any journey that the testator wished to make by water ; that the testator made frequent journeys by water to his zemindaris ; and when he was not so engaged, he used to be in daily attendance at the testator's residence, and remained there from early in the morning until about one in the afternoon, when, if there were no orders for him he used to return to the steamer. The plaintiff submitted he was entitled to take under the bequest to the " domestic servants " of the testator. *Held* that he was entitled to take under the legacy as a domestic servant of the testator. DHANNO SIRANG v. UPENDRA MOHAN TAGORE, **8 B.L.R. 244.**

(50)—*Construction of—Meaning of the term* 'labham' *used in a will—Demonstrative legatees, right of, to resort to general assets.*—A question arose in this case, whether the plaintiffs were entitled to be paid out of the general

Will—continued.

—3.—**Construction**—*continued.*

assets of the testator on failure of the source from which they had been directed to be paid by the testator : *Held*, though in the case of demonstrative legacies, the legatee is ordinarily entitled to resort to the general assets on failure of the source intended, the rule is subject to any directions to the contrary by the testator. Another contention in the case on behalf of the defendant, was that the interest on the capital, the dividends on the shares, and the income of the immoveable property of the testator should be excluded from the profits out of which the legacies were to be paid to the plaintiff and it was *held* that the contention was clearly opposed to the ordinary meaning of the vernacular term '*labham*' used by the testator. Judging from the use of the said word '*labham*,' a very generic expression covering different kinds of profits and gains, and from the context in view of other directions in the will, it must be taken to have been the intention of the testator to use the term in its comprehensive sense of profit, gain or income as opposed to the corpus yielding the same. CHINNAM RAJAMANNAR v. TADIKONDA RAMACHANDRA RAO, **29 M. 155.**

(51)—*Will, construction of*—" *For the benefit of the inmates of the Hospitol*," *meaning of*—*Personal bounty, motives of.*—Where a will, after making provision for several legacies, ran as follows :—"I will and direct that my executor shall.....divide the residue in his hands into three equal parts and give one of such parts to the proper authorities for the benefit of the inmates of Ca. Hospital, another of such parts for the benefit of the inmates of Ma. Hospital and the third of such parts to the Me. Co. Hospital." *Held* that the gift 'for the benefit of the inmates of the Ca. Hospital' does not indicate any motive of personal bounty on the part of the testatrix, but was intended to provide for the general maintenance of the Hospital named. The gift was accordingly valid. FANINDRA KUMAR MITTER v. THE ADMINISTRATOR-GENERAL OF BENGAL, **6 C.W.N. 321.**

(52)—Kul malik.—One of the clauses of a will provided "as to shop 1 (in number) which there is in Madhavpura, the same realizes a rental of Rs. 90 per year. My wife Devkor shall take the rent of the said shop. Should per chance anything have to be paid to my creditors, then my wife shall sell the said shop and pay (the defendants). She is the sole owner (*Kul malik*) of the said (shop)." *Held*, on a consideration of the whole will, that the testator meant by the above clause to pass to his widow an absolute estate in the house. LALBHAI v. MANSUKH, **8 Bom. L R. 482** SURAJMANI v. RABI NATH OJHA, **10 Bom. L R. 59.**

(53)—Malak—Waras—*Bequest by a Hindu to his wife—Daughter, a reversioner—Vested interest of the daughter.*—There is no real difference in the meaning of the words *malak*

Will- continued.

——3.—**Construction**—*continued.*

(owner) and *waras* (heir), when they are used in the wills. Where, therefore, a testator uses these words in his will with reference to his wife and daughter, it is clear that his intention in each case is to give his whole property to his wife for life and on her death to her daughter absolutely; and the daughter takes an estate vested in interest from the testator's death which would pass to her heirs on her death. CHUNILAL v. BAI MULI, **2 Bom. L.R. 46 = 24 B. 420.**

(54)—"Malik *like myself*" *meaning of*—*Power of disposition conferred on donee—Extent of interest—"After death of wife property to come to son if he is reformed in character," effect of provision—Construction.*—Although the use of the word "*malik*" in a will does not conclusively show that the donee was intended to take an absolute interest in the property, yet, if the expression "*malik*, like myself" is used, or if a power to sell or make a gift is conferred on the donee, the effect of the provision is to create an absolute interest. A testator provided in his will to this effect:— "After my death my wife will be *malik* like myself, having right to give away, sell, etc., and, after the death of my wife, all that property will come under the control of my son if he is reformed, otherwise, if the son's character is not reformed up to the death of my wife, that property will come after my wife's death on behalf of the grandsons—" *Held*, that the effect of the will was to vest the property absolutely in the testator's wife. *Held*, further, that the obvious intention of the testator was to keep the property out of the hands of the son so long as he did not reform himself, and that the testator provided that, if any portion of the estate was left intact at the time of his widow's death, it was not to find its way into the hands of his son, except in the event of a complete reformation of his habits in the meanwhile. AMERENDRA NATH BOSE v. SHURADHANY DASI, **5 Ind. Cas. 73 = 14 C.W.N. 458.** (8 C.L.J. 20, 30 A. 84, 10 C. 342, *R.*; 27 C. 44, 27 C. 649, 4 C.W.N. 337, 28 C. 499, 23 C. 670, 23 I.A. 37, *Rel.*)

(55)—*Will—Construction*—Malik, *meaning of—Direction for establishment of pious institution for commemoration of testator's same—Uncertainty—Reversioner not to get property—Void provision — Improvements—Right to claim value, when arises — Improvements by life-tenant or purchaser from him.*—No importance should be attached to isolated expressions in a will, but the Court must look to all its clauses and give effect to them, ignoring none as redundant or contradictory. (8 C.L.J. 20, *F.*) Although a donee might be declared as the *malik*, by which term ordinarily a heritable and alienable estate is created, the effect of the word may be modified by the context, and the full proprietary rights imported by the word may be materially restricted by the other provisions of the will. (8 C.L.J. 20, 10 C. 342, 30 A. 84, 5 A.L.J. 67, 18 M.L.J. 7, 12 C.W.N. 231, P.C., 10 Bom. L.R. 59, 7 C.L.J. 131, 3 M.L.T. 144, 5 Ind. Cas. 73, 14 C.W.N. 458, *F.*) Therefore, where it is stated in the preamble of a will that the testator's widow should own and possess *like himself* his ancestral properties, but in the body it is provided that she should be able to sell the properties for the performance of pious acts: *Held*, that the testator had no intention to create an absolute interest in favour of his widow. A will provided for the establishment of a pious institution of a permanent character for commemoration of the testator's name, *held* void for uncertainty. No effect can be given to a clause in a will, which provides that the reversionary heirs of the testator should not obtain his property. As a general rule, in order to entitle an occupant of land to compensation for improvements, three things must concur; *first*, he must have held possession under colour of title; *secondly*, his possession must have been adverse to the title of the true owner, that is, it must not have been possession by mere permission of another whose title he recognises; and, *thirdly*, he must have acted in good faith, that is, under the honest belief that he has secured good title to property in question and is the rightful owner thereof; and for this belief there must be some reasonable grounds such as would lead a man of ordinary prudence to entertain it. As a general rule, improvements made on property by a life-tenant thereof attach to the estate and pass to the reversioner or remainderman, at the expiration of the life estate, without any liability on his part to make compensation therefor; and the same is true of improvements made by a purchaser from one who holds a limited interest, for it is presumed that such purchaser knows the title which he acquires. The defendants purchased certain property from the widow of a Hindu testator and effected certain improvements on it. The reversioners sued to set aside the alienation. There was a substantial question in controversy as to the true effect of the will which was of an ambiguous character; *Held* that the plaintiffs would not be liable for the cost of any improvement effected during the lifetime of the widow but the defendants are entitled to claim the value of improvements effected by them subsequent to the death of the widow and up to the date of the judgment. KANDARPA NATH GHOSE v. JOGENDRA NATH BOSE, **6 Ind. Cas. 141 = 12 C.L.J. 391.**

(56)—Malik—*Meaning of—Absolute interest—Hindu widows.*—Unless there is something in the context qualifying it, the word *malik* used in a will, bears its technical meaning. When a testator bequeathed his property to his issue if he happened to have any, and if he had no issue then to his mother and wife who were to be "*malik and qubiz jaidad*," *held*, that the ladies obtained an absolute interest. THAKUR PROSAD v. JAMNA KUNWAR, **6 A.L.J. 420 = 31 A. 308 = 2 Ind. Cas. 474.** (30 A. 84, *R.*)

Will—continued.

——3.—**Construction**—*continued.*

(57)—*Construction of document—"Money"—General personal estate.*—Where a testator after clearly indicating an intention to exclude entirely certain of his relations from succession to his property, proceeded to bequeath his "money" to two legatees, with directions as to its disposal, it was *held* that the intention of the testator being apparently, from a perusal of the whole will, to bequeath all his personal property to the legatees, it was not necessary to construe the term used in its strict limited signification, but the whole of the testator's personal estate passed. CHEDA LAL v. GOBIND RAM, **A.W N. 1908, 205=5 A.L.J. 519.** [*R.*, A.W.N. 1908, 275.]

(58)—*Hindu Law—Will, construction of—"My house."*—Where a testator, after dedicating a house to the service of the *thakur*, directed that the deity should be located in "my house," *held*, that "my house" meant the testator's family dwelling-house. MANORAMA DASSI v. KALI CHARAN BANERJEE, **31 C. 166=8 C.W.N. 273.** [*R.*, 11 O.C. 271.]

(59)—*Bengali will, construction of—Practice—Vesting of bequest, words necessary for*—Parjyapta Haibek, *meaning and effect of—Appointment of Guardian with direction to make over gift on legatee attaining majority—Effect.*—In construing Bengali wills, it must be remembered that there is no line of precedents attaching to Bengali terms meanings which make them understood as terms of art by Bengali lawyers. The only safe course is to give to the words their plain ordinary meaning. There are no particular words necessary to the vesting of a bequest or a legacy. The "*Parjyapta haibek*," whether they mean "descend to" or "devolve or go" or "shall become vested" have the effect of vesting the legacy at once. A bequest in favour of a person simply confers a vested interest, and the appointment of an executor and guardian to that person while he is a minor, with a direction to make over the property to him on his attaining majority, does not postpone the vesting of the bequest. HARRIS v. BROWN, **28 C. 621=28 I.A. 159=5 C.W.N. 729=3 Bom. L.R. 808=8 Sar. 92.**

(60)—*Construction of will—"Purchase" does not include acquisition by inheritance—Intention of testator not to be presumed.*—One of the rules of construction in case of wills is that words in general are to be taken in their ordinary and grammatical sense, unless a clear intention to use them in another can be collected. When the language of the will is perfectly unambiguous and definitely precise, the Courts are not justified in straining it for the purpose of giving effect to some supposed intention of the testator which is neither expressed nor implied by the terms of the will. Under a clause of his will, a person gave proprietary possession for life of all houses then in his possession, and also of those which he might afterwards purchase (*khureed keren*). Five years after the execution of the will, he acquired a house by inheritance on the death of his brother. After his death, his widow claimed the house under the will. *Held* that the word "purchase" was used only in its ordinary sense, and so it could not include the notion of acquisition by purchase, and that the house did not pass by the will to the testator's widow. MRS. FRANCES GEORGE v. MRS. HELENA GEORGE, **6 N.W.P. 219.**

(61)—*Will—Gift with clear words of inheritance—Clause forbidding alienation — Nature of estate granted.*—A testator gave all his properties to his daughters "so as to be enjoyed by them for all time to come and with all rights of ownership." He however introduced into the will a clause forbidding alienation. The brother's son of the testator sued to set aside an alienation made by the daughters, on the ground that the will conferred on them only a limited estate and the alienation was in consequence invalid. *Held* that, as the gift to the daughters contained clear words of inheritance, the clause forbidding alienation could not neutralize the effect of those words. The plaintiff's claim was therefore not sustainable. KANNU PILLAI v. CHELLATHAMMAL, **10 M. L.J. 203.**

(62)—"*Such*"—*Interpretation.*—One of the clauses of a will ran "as regards the remaining one equal fourth share of the said residue, I direct that if at the time the said residue is divisible, my son Ardeshir shall have no debts due by him or any liabilities likely to result in a debt or debts or more than Rs. 5,000 the said shall be made over to him absolutely but if otherwise then I direct that the said share shall be held or settled by my executors upon trust until the said Ardeshir shall be free from such debts and liabilities or until he shall die to apply the income of the same in or towards the maintenance and support of him, his wife and children or such or one or more of them the said Ardeshir his wife and childern as the trustees may at their absolute discretion determine and the education and other benefit of such children including their marriage but when and so soon as he, the said Ardeshir, shall be free from such debts and liabilities as aforesaid upon trust to pay the same and all unapplied income if any to him the said Ardeshir absolutely." On a construction of this clause: *Held*, that the debts and liabilities of Ardeshir contemplated by the above clause are "debts due by him or any liabilities likely to result in a debt or debts of more than Rs. 5,000"; and it is with debts of that description that a comparison is implied by the use of the word 'such.' Time is no part of their description; it is extraneous to it and the reference to time is made only to indicate the event on which certain consequences are to follow according as debts and liabilities of the description indicated do or do not exist. BAI JAIJI v. MACLEOD, **8 Bom. L.R. 122=30 B. 493.**

Will—continued.

—3.—**Construction**—*continued.*

(63)—*Meaning of words "in trust"—For her maintenance and support—During her life.*—A will contained the following clauses :—Cl. 1:—I will and bequeath to my dear wife Anne in trust and for her maintenance and support during her life all the money, property, goods and chattels of which I may die possessed whatever and wheresoever situated, and I appoint my dear wife Anne sole administratrix of this, my last will and testament. Cl. 10:—I further will that my dear wife Anne, as sole executrix of this my last will and testament shall draw from current deposit accounts, whether here or in Great Britain, such sum or sums of money as she may require for her maintenance and for the working and maintenance of my property; and that she shall receive and dispose of all processes, rents and profits from the said property as to her may seem best in the interests of the property; and I empower her to sell all or any part of the property at any time when it may appear to her that a favourable opportunity occurs. *Held*, that the will conferred a life estate on the wife and that the testator did not intend to use words "in trust" in cl. 1 in their technical sense. Even if the words "in trust" were given their legal effect, he intended the trust for the benefit of his wife only. *Held*, further, that the words "for her maintenance and support" were words of description or motive, and would in no way cut down the estate "during her life" which the testator in terms gave to his wife. MARY HARRIETT ANNE WILSON v. GEORGE OAKES, **18 M.L.J. 331=31 M 283=4 M.L.T. 293.** (24 C. 834, P.C., *R.*)

(64)—*Devise of property to three devisees, jointly, from generation to generation, effect of—Meaning of the words* "Vamsa Paramparai" *and* "Egopithu"—*Limitation Act* (XV *of* 1877), *art.* 140.—A Hindu, by his will of 1875, devised properties to R, V and C, in the following words—"My self-acquired properties, the three devisees (R, V and C) from generation to generation (*Vamsa Paramparai*) unitedly (*Egopithu*), the survivors surviving without power of gift, etc., or sale, shall be enjoyed." R died in 1895 leaving plaintiff as his heir. R was never in possession of the house, nor did he participate in the profits thereof; but V and C lived in the house till their respective deaths. In a suit by plaintiff for R's one-third share of the house; *held*, on a construction of the will as a whole, that the intention of the testator was not to pass any estate of inheritance to the three devisees and their respective heirs as tenants-in-common, but to provide that the estate should be enjoyed by the three devisees and their descendants as long as any of them existed, and that it is in effect to establish a line of descent unknown to law. *Held*, also, where R, V and C be taken as tenants-in common or joint tenants, the entry of one would be entry on behalf of the rest, unless there were clear evidence of an intention to hold adversely. As V or C never intended to hold adversely

Will—continued.

—3.—**Construction**—*continued.*

to R, R was in possession through the other devisees till his death. So, plaintiff's suit was not barred under art. 140, Limitation Act. AUDIPURANAM PILLAI v. APPUSUNDARAM PILLAI, **5 M.L.T. 103=3 Ind. Cas. 311.**

(65)—*Construction* — 'Ekopithu,' *meaning of.*—Where a testator bequeathed some of his properties to A and B, and C, his adopted son to be enjoyed by them ("Vamsa Paramparayamayi") from generation to generation ("ekopithu") harmoniously, without any power of gift mortgage or sale, and there was also a gift of certain other property to his adopted son, *held* the testator's intention to be gathered from the will was that the estate should be enjoyed by the three devisees and their descendants without partition or alienation, and that they were not to take as tenants-in-common. AUTHIPURANAM v. APPASWAMI, **20 M.L.J. 99=5 Ind. Cas. 880.**

(66)—*Construction of will—Executor by implication.*—Where a testator in his will mentions the names of certain persons and adds they are to take care of his properties till his proposed adopted son attains his majority, the will does not appoint them as executors by implication. SESHAMMA v. CHENNAPPA, **20 M. 467.** [*R.*, 33 C. 657=10 C.W.N. 662.]

(67)—*Use of directory expression in a will.*—The use of such directory expressions in a will as "You are to pay my share of the expenses whatever they may be" for any purpose, does not vest in the executors such an absolute discretion that they may spend the whole and deprive the beneficiary of any beneficial interest in the estate. (MULLICK v MULLICK, (1829) 1 Knapp. 245, *F.*) NISTARINI DASSI v. NUNDO LAL BOSE, **30 C. 369=7 C.W.N. 383.** [*Affr.*, 33 C. 180, P.C.=9 C.W.N. 961=2 C.L.J. 189=7 Bom. L.R. 887=15 M.L.J. 331=32 I. A. 193.]

(68)—*Will, construction of—Legacy, Vesting of—Divesting clause—"Division"—Gift over—Indian Succession Act*, ss. 76, 91, 106.—A testator directed his trustees and executors, after conversion of all his estate into money, to divide it among the various persons named in the will, and to pay it over to them in the shares and proportions therein mentioned,—in the case of males, when they should attain the age of 21, and in the case of females, when they should attain that age or marry. There was also a provision in the will, that, in the event of any of such persons dying in the testator's life-time or at any time thereafter, prior to "division," leaving lawful issue, such issue should take the share of their deceased parent. One of the legatees who had attained the age of 21 at the testator's death, died some months after leaving issue. *Held*, on the construction of the will—(*a*) that at the testator's death, the legacy vested in the legatee, but became divested by the legatee's death prior to division. (*b*) that the term "division" in the will meant

Will—continued.

—3.—**Construction**—*continued.*

the ascertainment of the shares payable to the various persons named in the will ; (c) and that the gift over in favour of the issue of the legatee was not void for uncertainty, but took effect. (*Johnson* v. *Crook*, L.R. 12 Ch. D. 639 ; *Colli on* v. *Barber*, L.R. Ch. D. 834 ; *Bubb* v. *Padwick*, L.R. 13 Ch. D. 517 ; *Custom* v. *Seago*, L.R. 18 Ch. D. 218 ; and *Spencer* v. *Duckworth*, L.R. 18 Ch. D. 634, *R.*) BACHMAN v. BACHMAN, **6 A. 583 = A.W.N. 1884, 194.** [*R.*, 7 A. 822, F B.]

(69)—*Construction of document—Devise in perpetuity with condition against alienation—Condition inoperative.*—A Hindu by his will devised a certain village to the devisee and his heirs for ever, but with a condition attached that, if the devisee or his heirs alienated the village, it should revert to the heirs of the testator. *Held* that the condition was beyond the power of the testator and was inoperative, and that the devisee took an absolute estate. BAGESHRI KUNWAR v. SATNARAIN SINGH, **A.W.N. 1897, 104.** (4 M. 200, 5 C. 438, *R.*)

(70)—*Will, enjoyment under, postponement of —Validity—Vesting of property—Accumulation.* —Where there is a clear devise, a direction for postponement of enjoyment after the coming of age of the devisee must be disregarded. Under his will, A appointed X and Y (his two disciples, aged 18 and 11 years respectively) his heirs, with a direction that Rs. 500 should be spent every year by the trustees out of the income arising from the estate for the maintenance of each disciple or that the amount must be paid to them. He also added that, on Y attaining 30 years of age, the net residue of the property remaining at the time should be given to C (if the trustees consider him fit to carry on business transactions), and that, in case of Y's death, the same should be given to X. On a construction of the will, it was *held* (1) that the property vested in Y on the death of the testator, but only for a life-estate, and (2) that the income arising from the property (after deducting Rs. 500 to be given to X) should be paid to Y, the property remaining with the Official Trustee as directed by the will until Y attained the age of 30. GOSAVI SHIVGAR DAYAGAR AND GOSAVI JAGDEVGAR SHIVGAR v. L W.G. RIVETT CARNAC, **13 B. 463:** [*F.*, 24 C. 44 ; *R.*, 26 B. 319.]

(71)—*Will providing for postponement of enjoyment of property devised—Construction.*—Where a testator intends to make a present gift to his son (a major) but he intends, also, that his son should have the ultimate enjoyment of the whole estate in the hands of the trustees after the payment of the legacies, the deprivation of the son of the *present enjoyment* of the estate and the attempted restriction thereon are invalid and must be disregarded. LLOYD v. WEBB, **24 C. 44.** [*R.*, 9 C.W.N. 528 = 1 C.L. J. 605.]

(72)—*Directions in will relating to enjoyment of property, etc.*—*Testator's intention.*— The

Will—continued.

—3.—**Construction**—*continued.*

will of a testator provided for three events. First, that of his wife remaining his widow ; second, that of her marrying again and his children being alive ; and third, that of her marrying again and his children being dead. The event, which did happen, was the first, *i.e.*, his wife remained his widow until her death, though her children pre-deceased her without being married. *Held*, on the construction of the will, that it was the testator's intention, by the first devise, to give the estate to his wife and children jointly and that what followed was merely intended to restrict the mode in which they should enjoy it. HALIBURTON v. THE ADMINISTRATOR-ENERAL OF BENGAL, **21 C. 488.**

(73)—*Right of devisee to entire interest of testator—Burden of proving devise only of restricted interest.*—In this case, the plaintiff, the adopted son of the testator, sued for a refund of certain payments made by him and for a declaration by the High Court of his non-liability under the will of his father to make any further payment in future to the defendant. The first Court was of opinion that the bequest contained in the will executed by plaintiff's father, conferred on the husband of the defendant and his brothers an absolute interest in the property bequeathed to them, and, on that ground, among others, it dismissed the suit of the plaintiff. The lower appellate Court, however, considered that, as the deed of adoption in which the devise was made, contained the names of the devisees without any mention of heirs, it was, a mere personal devise to them. But, on second appeal, the High Court applied the rule for the construction of wills recognised in s. 82 of Act X of 1865, that, where property is bequeathed to any person, he is entitled to the interests of the testator therein, unless it appears from the will that only a restricted interest was intended for him. And plaintiff who was the party that contended for the restricted construction, and upon whom lay the *onus* of supporting that contention, had failed to establish that such was the intention of the testator. SREEMUTTEE SURSUTTY DOSSEE v. POORNO CHUNDER ROY, **4 W.R. 55.** [*R.*, 2 B.L.R.O.C. 11.]

(74)—*Suit for getting will construed—Provision for maintenance of testator's children—Specification of period of distribution—Vesting of share of dividends in each legatee—Estate once vested, express words necessary to divesting of.*—This was a suit filed for the purpose of having certain clauses in a will construed and the shares of the beneficiaries under the will paid to them. The Court had to determine the correct grammatical construction of the will and to ascertain the legal rights of the beneficiaries under it. Under such construction it was *held* that the will (1) directed the executors to collect the moneys of the testator and invest them in public funds. It then (2) provided for the maintenance of the testator's

Will—continued.

—— 3.—**Construction**—*continued.*

children out of the dividends upon the invested moneys which were to be applied at the discretion of the executors towards the maintenance and education of the children until each son attained the age of twenty-one years, when his share of the dividends was to be paid to him. After providing then for a dowry to each of the daughters, the will, by its second clause, provided for the ultimate distribution of the residue, directing that, after the testator's daughters shall be married and after all his sons shall have attained the age of twenty-one, it shall be distributed between the sons and daughters that may be surviving at the time. This construction of cls. (1) and (2) of the will, which was that contended for on behalf of the plaintiff, was held to be the fair grammatical construction under which the several provisions as to the testator's money would follow one another in just and logical order. The other construction proposed, according to which the directions for distribution contained in cl. 2 of the will were to be deemed to apply only to the economies out of the dividends, or the accumulations of them which the executors might be able to effect or make, was held to be a strained or forced construction, though not an ungrammatical one, and to be open to several objections such as that of excluding the daughters from sharing in the bulk of the moneys and limiting them to a share only in the probable accumulations of the dividends. The further question had to be considered as to whether the son and daughter who died before the period of distribution, having lived beyond their 21st year were, through their representatives, entitled to share in the distribution; in other words, whether the sons and daughters, on attaining their 21st year, took a vested interest in their share of the collected moneys. *Held* that, by the testator's direction that each son shall be paid his share on attaining the age of 21, withdrew him from the general clause and allocated to him a particular interest in the fund. Though grammatically, the share allocated to him under the will was a share of the dividends, the allocation or gift to a legatee of the dividends of a fund should be regarded in law as a gift to him of the fund itself. The direction to the trustees to pay his share of the dividends to each son of the testator as he came of age was a gift, and a vested gift of such share to him, and a legacy once vested could not be divested except under express words to the contrary in the will itself. DE SOUZA v. VAZ, **12 B. 137.**

(75)—*Hindu will—Construction—Period of survivorship—Time of distribution — Contingency.*—Where the event of death of legatees in a will is treated as a contingency, something else must be intended than merely to provide for the legatee dying at any time. Where a Hindu testator gave property to his two sons, an infant grandson and a widow, authorizing them to succeed to the whole estate and to

Will—continued.

——3.—**Construction**—*continued.*

receive equal shares, and the will stated, "if any of these four persons happen to die, the survivor of them will receive this estate in equal shares; but, if there be a son or grandson, surviving as the heir and representative of the party dying, such survivor shall succeed to his share; if there be a daughter or granddaughter in the female line surviving, such survivor shall receive a share of the property; so long as my infant grandson shall not have attained his majority, the whole of my estate shall remain undivided," it was held that the date of the testator's death was the period of survivorship intended by the will, that all the four legatees, having survived the testator, took absolute interests in the shares named, and that the estate became divisible on the infant grandson attaining majority. ELLOKASEE DOSSEE v. DURPONARAIN BYSACK, **5 C. 59.** (9 M.I.A. 123, *Disc.*)

(76)—*Gift to a class in a will—Postponement of period of distribution—After-born child—S. 98, Succession Act (X of 1865)—Lapsed bequest—Division among surviving legatees—Original and accruing shares.*—Where, under a will, the children of the testator's brother took vested interests in his residuary estate at his death, the period of distribution alone being postponed, it was held that the class would open to admit an object born after the testator's death, but before the period of distribution. [*R.*, 9 C.L.R. 28.] Where, under the same will, the nephew and nieces of the testator took in unequal proportions, "with benefit of survivorship between and among all of them," it was held that the division in unequal proportions applied only to the original shares, and not to accruing ones, and that, therefore, the share of a nephew, who died after the testator's death, but before the period of distribution, was divisible equally among his surviving brothers and sisters. When the subject of a gift is disposed of among the original objects in unequal shares, there is no necessary inference, in the absence of any declared intimation of intention to assimilate the accruing to the original share, that the survivors are to take accruing shares in the same relative proportions. MASEYK v. PERGUSON, **4 C. 670.** [*R.*, 9 C.L.R. 28.]

(77)—*Gift to class—Some of the members not having been in existence at testator's death—Secondary intention to give to members who should be so in existence.*—The main question on which the construction of the will in this case turned was whether the terms "sons of sons," "daughters of sons" and "widows of sons," which occurred throughout the will, denoted a class, so that the gift would be wholly void, as only a very few members of the class were in existence at the time of the testator's death, or whether the gift to any members of the class who were in existence at such time took effect; in other words, whether, under the will, the gift should be taken to be good in

Will—continued.

——3.—**Construction**—*continued.*

favour of such members of the said three classes as were in existence at the time of the testator's death to the exclusion of all the others. It was held that in construing a will it was the primary duty of the Court to carry out, as far as possible, the intentions of the testator, and if the Court comes to the conclusion that the testator had the primary intention of benefiting all the members of a class, and if such intention fails by reason of its being void, yet, if the Court can deduce a secondary intention that at least such members of the class should take as were in existence at the time of the testator's death, then effect should be given to such secondary intention. In the present case, the Court concluded that the testator intended to benefit all the members of the three classes as a whole and that he had no intention of benefiting any particular member or members of any of the classes in the event of the gift to the classes as a whole failing by reason of the non-existence of some of the members at the testator's death. Reading the will as a whole, the conclusion was arrived at that the testator intended to benefit no members of any of the classes unless he could equally benefit all of the members of each class whether born before or after his death. KHIMJI v. MORARJI, **22 B. 533.** [*R.*, 26 B. 449=3 Bom. L.R. 857, 32 C. 598=9 C.W.N. 749=1 C.L.J. 482.]

(78)—*Absolute legacy—Mode of legatee's enjoyment restricted—Effect.*—If a testator leaves a legacy absolutely as regards his estates but restricts the mode of the legatee's enjoyment to secure certain objects for the benefit of the legatee, the absolute gift prevails upon failure of such objects, if the intention of the testator, as collected from the will as a whole, is not against the absolute gift. THE ADMINISTRATOR-GENERAL OF BENGAL v. APCAR, **3 C. 553.**

(79)—*Legacy to minor—Absolute gift—Discretion of executor.*—Where there is an absolute bequest and power to executor to delay making over the legacy at discretion *held* that, on attaining majority, the legatee should at once be put in possession. DESILVA v. DE SILVA, **1 Ind. Jur. N.S. 16=Bourke O.C. 281.**

(80)—*Testator leaving his property subject to a legacy—Executors and residuary legatees—Equitable mortgage by residuary legatees to secure their business debt—Deposit of title deeds of property in suit—Subsequent formal mortgage on the same property—Property in suit is the same as that left under the will—Legacy unpaid—No deposit of the will of the testator—Root of mortgagor's title indicated by a document deposited—Mortgagee making no investigation of the mortgagor's title—No concealment of real facts by the mortgagors—Dealings of residuary legatees not known to legatees—Discovery of the mortgage by the legatees—Suit by legatees to establish the priority of their claim over the mortgagee—Mortgagee's duty to investigate mortgagor's title—Presumption that if mortgagors had been asked, they would have given an honest answer—Effect of non-investigation of mortgagor's title—Constructive notice—Priority of legatees' claim over the mortgagee—Lapse of time—Right of the mortgagee to assume the consent of the legatees — Minority of some of the legatees at the time of equitable mortgage—Possession by residuary legatees not inconsistent with the purpose of the will—Rights of parties under such circumstances.* — Their Lordships agreed with both Courts in their decision that the legacy under the will in this case was charged upon the property in suit. One S died on February 15, 1885. He left eight sons, four by his first wife (hereinafter called the elder sons) and four (hereinafter called the younger sons) by his second wife L, who also survived him. By his will, he left all his property to his elder sons, subject to a charge of Rs. 30,000 in favour of his widow L and his younger sons. After their father's death, the elder sons carried on large business transactions, under the style of Somji Parpia & Co., and in the course of their business became indebted to the Bank of Bombay in respect of advances on bills drawn by the firm in Bombay upon a branch of the firm at Indore. To secure these advances, the elder sons, on September 1, 1890, deposited certain title-deeds relating to the property in suit, by way of equitable mortgage, with the Bank ; and on January 12, 1899, the Bank obtained from them a formal mortgage on the same property, to secure the repayment of Rs. 52,000 in respect of bills then due or to become due drawn by the firm on their Indore Branch. It was not disputed that, that debt was a debt of the four elder sons in respect of their own business, and that the legacy to the widow and the younger sons was at that time and still unsatisfied. The property consisted of a house and a piece of land, to both of which the mortgagors declared themselves to be entitled, but both of which had been specified by their father S in his will, as subject to the charge of Rs. 30,000 in favour of his widow and younger sons. That will was not among the documents of title deposited with the Bank, but the root of the title to the house, the more valuable of the two properties, was indicated in the will of Meenabai, widow of S's brother D, which was deposited. From that it appeared that the house had been the joint property of the two brothers. The Bank's legal advisers made no investigation of the title of the mortgagors, and appeared to have assumed that the mortgagors were the absolute owners of the property mortgaged. It was not suggested that the mortgagors practised any concealment of the real facts of the case. Nor was it suggested that the younger sons had any knowledge of the dealings of their elders with the Bank. But when the Bank advertised the properties for sale, they filed the present suit in order to establish the priority of their charge over the mortgage to the Bank. The only question in the appeal was

Will—continued.

——3.—**Construction**—*continued.*

whether they were entitled to such priority. *Held*, that, if the Bank's legal advisers had made any investigation of title, they must have inquired how S's share had come to the mortgagors and in that way obtained cognizance of his will, and of the charge on that portion of his estate; that if the mortgagors had been asked about their father's will, it was to be presumed that they would have given an honest answer that the mortgagee had constructive notice and that the claim of the younger sons of S must prevail over the mortgage to the Bank and the title of its transferee. It was contended that by the terms of the will the legacy was to be made up and paid within six years after the testator's decease; that this period would have expired in 1891, eight years before the date of the mortgage; and that assuming notice of the will on the part of the Bank, the Bank was entitled to assume that the executors were acting with the consent of the legatees: *Held*, that, lapse of time was, no doubt, a circumstance that might be taken into consideration in cases of that kind; but having regard to the fact that, in the present case, two of the younger sons were still minors when the title-deeds were deposited with the Bank, and that continued possession by the elder sons was not inconsistent with the purposes of the will, the rights of the parties remained unaffected by that circumstance. BANK OF BOMBAY v. SULEMAN SOMJI, **10 Bom. L.R. 1065=12 C.W.N. 993=4 M.L.T. 201=18 M.L.J. 435=5 A.L.J. 66=33 B. 1=8 C.L.J. 345=3 I.A. 139, P.C., on appeal from 7 Bom. L.R. 407; 6 Bom. L.R. 800.**

(81)—*Failure of life estate—Acceleration of remainder—Applicability of doctrine to Hindu wills.*—A gift in remainder, expectant on the termination of an estate for life, does not fail, but is accelerated, by reason of the gift of such prior estate not taking effect. The principal of *Lainson* v. *Lainson* (5 De Gex, M and G., 754; 18 Beav. 1) was held applicable to Hindu wills. ADJUDHIA BAKSH v. RAKHMAN KUAR, **10 C. 482=11 I.A. 1, P.C.=4 Sar. 497.**

(82)—*Will—Previous indebtedness— Legacy in satisfaction thereof—Estoppel.*—A bequest in a will which ran thus—" My older brother, V's self-acquisition to the extent of Rs. 10,000 is kept with me So, that money should be given to him "—was treated as a legacy in satisfaction of the indebtedness of the testator to his brother; and the legatee was not estopped from claiming the legacy under the will by the fact that, in a suit brought by a brother of his, claiming his share in the testator's estate as family property he had supported his brother and had also claimed a share, and it was then decided that the property was the sole property of the deceased, and that neither he nor his brother had a right to share therein. RAJAMANNAR v. VENKATAKRISHNAYYA, **25 M. 361=12 M.L.J. 183.**

(83)—*Specific fund set apart, liable for purposes specified.*—By her will one Mrs. B directed that her funeral expenses should be paid

Will—continued.

——3.—**Construction**—*continued.*

out of the legacy bequeathed by her to her daughter. At the time she made her will she had certain residuary estate of which, however, she was then not aware. *Held*, the said expenses ought to be paid out of the legacy alone, effect having to be given to the express directions in the will to that effect and what the testatrix would have done if she had, at the time of making the devise, been aware of the existence of the residuary estate is not a matter to be taken into consideration. CAMANI v. THE ADMINISTRATOR-GENERAL OF MADRAS, **29 M. 290.**

(84)—*Testatrix—Legatee — Bequest taking effect when legatee attains 25 years—Void condition.*—A testatrix by her will provided: " When the said Husenbhoy Ahmedbhoy attains the age of twenty-five years my executors shall make over my said property to him and till then my executor Ahmedbhoy Habibboy shall keep with him the whole of that property." The legatee Husenbhoy on attaining his twenty-third year sued to recover this property from the executors of will; *Held*, that the plaintiff having attained the age of twenty-one and thus being three years past his majority was entitled to have the property of the testatrix handed over to him although his enjoyment of it was by her will to be postponed till he was twenty-five, unless in the meantime the income was clearly disposed of in favour of some-one else. HUSENBHOY v. AHMEDBHOY, **4 Bom. L.R. 336=26 B.319.**

(85)—*Bequest in a will—Court's opinion and discretion.*—Where a testator bequeathed to his daughter " on her attaining her eighteenth year Rs. 10,000 with interest, if she marries, to be settled upon herself and children solely: should she die unmarried, her money to be divided equally between her brothers: and, if either of them die, the whole of the money to go to the survivor, " it was held that the daughter, who attained her eighteenth year, had a vested interest in the legacy, subject to be divested upon her dying at any time unmarried, and further subject to an executory trust in favour of her children, in the event of her marrying at any time, and that, consequently, the daughter was not entitled to have the capital of the legacy paid to her. *In the matter of the will of* C. M. HUNTER AND *In the matter of* ACT XXVIII OF 1866, **4 C. 420.**

(86)—*Direction or wish contained in will not binding on devisee.*—In the will of a member of a Hindu joint family, there was a provision to the effect that 'he (the testator) having appointed G and B his executors (*wasi*) and owners (*malik*) of all his property under the management (*ba-sarbarah kari*) of S, they shall after his death remain in possession of it and S shall continue to be manager, but they shall have no power of transfer, and, after the death of both of them, S shall be the absolute owner of all the property." *Held*, that the provision

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Will—continued.

—3.—**Construction**—*continued.*

that "G and B shall be owners of the property for their lives" gave them jointly the right to possession of it. *Held*, further, that the clause to the effect "that G and B shall be owners of the property for their lives under S's management" must be interpreted as expressing merely a wish or direction that S should act as their manager and that such wish or direction was not binding on them. SITLA BAKHSH v. BRIJ RAJ KUAR, **4 O.C. 86.**

(87)—*Gift of share of rents and profits—Gift of corpus of estate.*—A gift, under a will, to certain persons and their heirs for ever, of certain annuities, being fixed portions of the net profits of an estate, was held to amount to a gift of proportionate shares in the *corpus* of the estate, in the absence of a conflict of such an interpretation with the general intention as gathered from the whole will. HEMANGINI DASI v. NOBIN CHAND GHOSE, **8 C. 788=11 C.L.R. 370.** (2 C.L.R. 112=4 C. 455, 4 C. 897, 7 C. 772, 7 C. 269, *Cited.*) [*R.*, 3 C.L.J. 515.]

(88)—*Testator—Income given for life, but property liable to be devised by will by the donee—Effect of the power.*—Where a testator gives by his will income of certain property to a certain person for life with a power to give the property by a will to whomsoever that person pleased, such person takes a life interest in the income of the property and anyone who takes under the latter's will takes the property from the first testator. The only requisite condition for a legal and valid exercise of the power to give property by will is that the donee taking under the will executed in exercise of the power should be a person who was in existence actually or in contemplation of law at the time of the first testator's death. RAGHAVJI v. NARANDAS, **8 Bom. L.R. 921.**

(89)—*Proviso for cesser—Conditional limitation—Breach of condition.*—Prosono Coomar Tagore, a Hindu, died on 30—8—1868, having made a Will in the English language, whereby, after declaring that he had already made such provision for his son Ganendro (the plaintiff who had become a Christian in his father's lifetime) as he, the testator, considered sufficient, and that Ganendro would take nothing whatever under the Will, he gave all his property to four trustees, upon trust, as to the moveable property (in the Will called personal estate) "to collect and get in the same" (with certain specified exceptions), and thereout "to pay his funeral expenses and debts and such legacies as were not by the Will postponed in payment:" and to invest the residue, and out of the annual proceeds of such investments, so far as the same would extend, to pay the annuities and postponed legacies as they became payable; and to pay such surplus income as might, from time to time, exist to the person entitled to the beneficial enjoyment of the real property, or the surplus rents and profits thereof; with an ultimate trust, after all the legacies and annuities to the beneficial or absolute enjoyment of the real property. And as to the immoveable property (in the Will called real property), upon trust, until all the debts and legacies had been paid, and all the annuities had fallen in to receive the rents, and thereout in the first instance to pay the unsatisfied legacies and annuities and to pay the surplus rents to the person or persons for the time being to whom the real estate (subject to the devise to the trustees) was given by the Will. And, as a first charge on the net income of the real property after satisfying the expenses of establishments the testator directed to pay Rs. 30,000 per annum to the person for the time being entitled to the beneficial enjoyment of the real property or the surplus income thereof. He further directed them, after all the annuities and legacies had fallen in and been satisfied, to convey the real estate so far as the then condition of circumstances would permit, unto and to the use of the person entitled, under the limitation contained in the Will, to the beneficial interest therein. The first limitation was to Jattendro's life. At the end of the limitation of the real estate, the Will contained the following proviso (on which the plaintiff based the present suit):—"Provided always, and I hereby declare that, if any devisee, or tenant-for-life or entail, or otherwise, or any person entitled to take as heir by descent, or adoption, or otherwise, or in any manner under the limitation hereinbefore contained shall permit or suffer the said property so decreed and limited as aforesaid or any portion thereof, to be sold for arrears of Government revenue, or shall, after attaining his majority ceases to keep up in a due state of repair, and to use as his residence in Calcutta the said *baithakhana* house and premises where I now reside, and make use of and enjoy my library, horses, carriages, farmyard, furniture in the said house, and jewels, gold and silver plates, etc., in my use or possession, then, and immediately thereupon the devise and limitations in this my Will contained and declared shall wholly cease and determine as to him, and the person next in succession to him, under the limitation aforesaid, shall at once succeed as if the said person so permitting or suffering the said property, or any portion thereof, to be sold for arrears of Government Revenue, or so ceasing to keep up in a due state of repair, and to use as his residence my said *baithakhana* house, had then died." The testator died in August 1868. On 17-12-1868 his son, the plaintiff, instituted a suit for avoiding and setting aside the trusts and limitation in the Will, except so far as they were for the payment of debts, legacies and annuities. On 1—4—1869, a decree was made dismissing the suit, but giving the plaintiff costs out of the estate. Against that decree, the plaintiff appealed, and on 1—9—1869 the appellate Court by its decree declared that, subject to the trusts for the payment of debts, legacies and annuities, the plaintiff was absolutely entitled to the personalty or moveable property and in

Will—continued.

——3.—**Construction**—*continued.*

effect that he was entitled as the testator's heir-at-law, after the death of Juttindro to the immoveable property. Against this decree Juttindro and others claiming under the limitation in the will appealed to the Privy Council. At first the plaintiff did not appeal against the decree of 1—9—1869, but he subsequently obtained from the Judicial Committee special leave to appeal and in his cross-appeal he claimed that the gift by the Will of the life-estate to Juttindro ought to be declared void and inoperative. By the order of Her Majesty in Council dated 9—8—1872, it was declared that the defendant Juttindro was beneficially entitled to a life interest under the Will in the immoveable property, and also in the moveable property directed to be conveyed or converted into a fund respectively subject to the payments in the Will directed to be made, and to the provision of the Will not thereby declared to be void; and also, until the legacies and annuities fall in and are satisfied, to receive Rs. 2,500 per month out of the net rents of the immoveable property, and also the surplus rents of the same and the surplus interest of the moveable property, and that upon the failure or determination of the life-interest of Juttindro, the plaintiff was entitled as heir-at-law to the real and personal property. The proviso for cesses was not among the provisions which were declared void. Juttindro was one of the trustees under the Will. After the testator's death, the business of the estate continued, as theretofore, to be carried on in a portion of the *baithakhana* house; and Juttindro who had a family dwelling house of his own, used, up to November 1869, to attend at the *baithakhana* daily for the transaction of business. In November 1869, Juttendro quarrelled with his co-trustees, and ceased to go to the *baithakhana*. In April 1870, he demanded from the other trustees that possession of the *baithakhana* should be given to him, and upon their insisting on the rights to occupy the portion of the *baithakhana* used for the purpose of the estate business, sued them for possession. In July 1870, a decree for possession was made in his favour; the trustees appealed, and ultimately in July 1871, the appellate Court made a declaration that it was consistent with the truth of the Will that Juttendro should enter into possession, and the trustees were ordered to deliver to him possession of the *baithakhana*, except the portion of the ground floor occupied for the business of the estate. After obtaining this decree, Juttindro found that the *baithakhana* was in a very bad state of repair, and called upon the trustees to have proper repairs effected. On their refusal to do so, except under the direction of the Court, Juttendro in December, 1871, sued to compel them to effect necessary repairs. The trustees contested the suit; but in March 1872, a decree was passed directing them to make the repairs. Thereupon the repairs were completed in October 1872. Ganendro filed a suit against

Will—continued.

——3.—**Construction**—*continued.*

Juttendro alleging that the latter had committed a breach of one or more of the conditions contained in the proviso for cesses, by not residing in the *baithakhana* house and by neglecting to keep it in repair and had thereby incurred a forfeiture of which the plaintiff was entitled to take advantage. *Held* that the clause containing the provisions for cesser and shifting of the estate was intended to come into operation as a whole, and not piecemeal and that, under the circumstances, the time had not arrived when the testator had intended the clause to operate. *Held* also, that assuming that the time had arrived when the proviso for cesser would, under ordinary circumstances, take effect, the action of the plaintiff in contesting the right of Juttendro, under the Will, to occupy the *baithakhana* house and premises, debarred him from claiming that effect should be given to the clause of forfeiture for non-residence. Even apart from any action by the plaintiff, there were circumstances arising out of the conduct of the trustees which were sufficient to execuse non-residence by Juttendro, and which would suspend the operation of the forfeiture clause until October 1872 (inasmuch as Juttendro had, by no default of his own, been prevented until then from obtaining such a possession as was contemplated by the forfeiture clause). The forfeiture clause was not brought into operation by the judgment and order of the Judicial Committee of 9-8-1872. *Held*, further, on the evidence, that Juttindro had complied with the conditions as to residence. GANENDRO MOHUN TAGORE v. RAJAH JUTTENDRO MOHUN TAGORE BAHADOOR, **12 B.L.R. 1.** [*Affirm.*, 14 B.L.R. 60, P. C. = 22 W. R 377 = 1 I. A. 387.]

(90)—*Devise to heir.*—*Quære*, whether the sons take by descent or by devise, property left to them by their father by a will and which would have passed to them as heirs in its absence? PAULIEM VALOO CHETTY v. PAULIEM SOORYAH CHETTY, **1 M. 252 = 3 Sar. 698 = 4 I.A. 109, P C.**

(91)—*Hindu Law—Will—Construction—Gift to widow—Disinherison of sons.*—It is not necessary that there should be an express declaration of the testator's desire or intention to disinherit his sons, if there is an actual gift to some other person expressed in clear and unequivocal words. So, where a Hindu, having two minor sons, executed a will drawn by an English attorney and signed by him in Bengalee, in these terms, *viz.*, "I give, devise, and bequeath unto my wife—and her heirs and assigns for ever all my real and personal estates and effects and do appoint my said wife sole executrix of this my will," *held* that it must be assumed that the testator understood the meaning of the Will and that it was explained to him. *Held* further, that, on a construction of the Will, the words thereof unequivocally showed that it was the testator's intention that his wife should be something

Will—continued.

—3.—**Construction**—*continued.*

more than a trustee and manager for the infant heirs and that she should become the absolute owner of all his property. TARUCKNATH SIRCAR v. PROSONO COOMAR GHOSE, **19 W. R. 48.** [*Commented on*, 9 C.P.L.R. 98.]

(92)—*Bequest to wife imposing obligation to maintain and educate children — Nature of interest taken by legatee—Construction of Will —Decree against wife and son—Execution—Interest of wife and son under Will attached—Civ. Pro. Code*, 1882, *ss.* 268, 274, 275—*Assignment of interest—Conveyance to defraud creditors—Transfer of Property Act*, IV *of* 1882, s. 53.—In 1891, A died leaving him surviving his widow W and two sons S and T (defendants). Prior to his death, he had executed a Will, under which he bequeathed the residue of his property to trustees (one of them being W) in trust to pay the rents and income thereof to W for life. The Will also directed that she should, during her lifetime, maintain, educate and bring up his children in a manner suitable to their degree in life, and that, after her death, all his properties should be divided equally between his two sons on T attaining the age of 25 years. The present suit was brought by the plaintiff, the holder of a decree against W and S, praying that the testator's Will may be construed and the rights of W and S therein may be ascertained and declared. On behalf of the defendants it was contended that W was a bare trustee of the rents for the benefit of her sons. *Held* that the interest taken by W under the Will was one for life in the rents, but subject to the obligation of maintaining, educating and bringing up her children S and T. *Held*, further, that, the testator's children having attained majority and also obtained a considerable fortune under the Will of their uncle, and consequently being no longer in need of being maintained by W, that obligation had been discharged with the result that W was entitled to a life-interest free from all further obligations to maintain the testator's children. In the above case, in execution of the decree which the plaintiff had obtained against W and S, the immoveable properties which had belonged to A's estate were attached under s. 274, Civ. Pro. Code, 1882, by an order dated 2nd July, 1895. On the part of the defendants it was contended that W had no attachable interest, because she was a bare trustee for her sons under the Will. They further pleaded that, even if she had any attachable interest, the attachment should not have been made under s. 274, but only under s. 268, because she must be held to have an interest in moveable property only. *Held* that the interest taken by W must be regarded as immoveable property as defined in s. 2, cl. 5, of the General Clauses Act (I of 1868), and that the same had been validly attached under s. 274, Civ Pro. Code, 1882. In the above case, the defendants also contended that the plaintiff had no remedy against either of them, because W had

Will—continued.

—3.—**Construction**—*continued.*

surrendered her life-interest to her son T under an assignment deed, dated 20—2—1896, and also because the interest of S under the Will had been settled for the benefit of himself and his family under a deed of settlement, dated 9—2 1895. *Held* (1) that, under s. 276, Civ. Pro. Code (1882), the assignment by W was invalid as against the plaintiff, the assignment having been made subsequent to the attachment (of 2—7—1895); (2) that, even independently of the attachment, W's assignment to her son T must be held to be invalid as against the plaintiff under s. 53 of the Transfer of Property Act (IV of 1882), the express object of the assignment being to take away the property from the reach of creditors; and (3) that the settlement deed by S was also invalid under s. 53 of Act IV of 1882, as against the plaintiff. NATHA v. DHUNBAIJI, **23 B. 1.** [*Cons.*, 13 C. P.L.R. 180; *Expl.*, 25 B. 202.]

(93)—*Repugnant gift over—Bequest to wife—Validity.*—Where there is gift which upon the face of it appears to be absolute, but subsequent provisions, either of the same will or by a codicil, show an intention to cut down the interest to a life interest, the Court reading the whole will or will and codicil together will allow the intention to prevail; but where there is an absolute gift in the first place and no subsequent words purporting to cut it down but provisions in favour of other objects purporting to limit or restrain the complete power of alienation or testamentary disposition of the first donee, or to compel the devolution of property on the intestacy of the first donee otherwise than the law would prescribe, then such provisions are void as being inconsistent with and repugnant to the absolute gift to the first donee. Where a testator leaves all his property to his "wife" and there is no other description of the legatee, even though she might have been previously married, and therefore her marriage with the testator invalid, the bequest will nevertheless hold good in the absence of any suggestion that there was any fraud upon the testator in the matter of her former marriage. ADMINISTRATOR GENERAL v. WHITE, **13 M. 379.**

(94)—*Will—Bequest of money to wife directing its use in good works — Vagueness of direction, bequest not invalidated by—Indian Succession Act* (X *of* 1865), *s.* 125.—The plaintiff in this case was the widow and the defendants were the executors, of the testator, who by his Will left the plaintiff a legacy of a sum of Rs. 2,000 directing that the amount should be credited in the defendant's shop in the name of the plaintiff and interest should be paid to her every year at 6 per cent. and, if plaintiff in her lifetime demanded the money for any "*good works*," the principal sum should be paid to her. The main contention, on appeal, related to the proper construction of the Will so far as it concerned the above legacy left to the plaintiff appellant. The lower

Will—continued.

—3.—**Construction**—*continued.*

appellate Court *held* that the legacy was a conditional legacy, and that the condition about "good works" was not valid for reasons of uncertainty, and that the appellant could only recover the interest of the money, and not the principal; but, the High Court *held* that the construction put upon the Will by the lower Court was erroneous and unsupportable. The case fell within the analogy of the bequests referred to in s. 125 of Act X of 1865, and not in s. 127. There was no condition precedent in this case such as is contemplated in s. 121 or 123. The mention of "good works" was not intended to limit the absolute right of appellant to the money. It was only a direction, and not a condition precedent. The bequest under consideration came within the class of bequest with directions as to application or enjoyments, and the principal intention of the testator was to bequeath absolutely Rs. 2,000 for the benefit of the appellant, who was his wife, and this gift was meant by him as a provision for her. The bequest was not in favour of "good works" but one in favour of the plaintiff-appellant. There was, however, a direction relating to "good works," and that direction being void for uncertainty plaintiff became absolutely entitled to the money. BAI BAPI v. JAMNADAS HATHI SANG, **22 B. 774**. [*R.*, 4 Bom. L. R. 893, 31 C. 166=8 C.W.N. 273, 75 P.R. 1907=168 P.L.R. 1908=139 P.W.R. 1907.]

(95)—*Bequest after testator and his wife's death—Legatee dying before testator's wife.*—One S executed a Will whereby he gave all his property after the death of himself and his wife M to his daughter B and his nephew D. D survived the testator but predeceased M. *Held* that D, took a vested interest in the property which was transmittable to his sons. BILASO v. MUNNI LAL, **8 A.L.J. 577**. (15 C.W.N. 393, 8 A.L.J. 433, *R.*)

(96)—*Widow to be absolute owner in default of son—Birth of son in testator's life-time—Son dying shortly after testator's death—His mother takes only a limited estate.*—Where, under a will, the whole of the testator's property was bequeathed to his widow with full power of alienation, with the proviso that, in the event of son being born (the wife being then pregnant), the son would take father's place as owner of the whole estate and where after execution of the will and before the testator's death, a son was born and survived the testator by a few days only: *Held*, that the true construction of such a will is that the widow is to take, in the event of a son not being born, and that no provision is made for the devolution of the estate on the son's death and that on son's death his mother is his heir and takes only a limited estate. PREMKUAR v. JAGOT SINGH, **15 P.W.R. 1911=9 Ind. Cas. 742=178 P.L.R. 1911.** (16 C. 383, 31 M. 310, 33 C. 947, *R.*)

(97)—*Devise by Hindu to his wife—Direction to take possession and enjoy as if she was owner—Bequest of life interest.*—Courts always lean against such a construction of the Will

Will—continued.

—3.—**Construction**—*continued.*

of a Hindu testator as would give to his widow unqualified control over his property. By the use of such words as "my wife is the owner after me" or words of similar description, it is usually understood that the testator is providing for the succession during the life-time of the widow and not altering the line of inheritance after her death. So, in the present case, notwithstanding that the testator had emphatically declared that his wife was to be the owner after his death, in one passage stating that just as he was the owner, so she was to be the owner, the widow was held to have obtained only a life-interest in the property. HARI LALL v. BAI REWA, **21 B. 376**. [*R.*, 8 Bom. L.R. 482, 1 S.L.R. 211, 13 Bom. L.R. 471; *D.*, 27 C. 44, 27 C. 649=4 C.W.N. 337.]

(98)—*Gift over to sons of income from house—Life-estate—Residue of undisposed ulterior interest, gift of life-estate in.*—In this appeal the Court had to determine whether the construction put by the Division Court upon the eighth clause of the Will in question and upon the thirteenth and eighteenth clauses read together was correct. By the eighth clause, the testator provided that his wife should have a life-interest in two of his dwelling houses therein specified with absolute powers of disposition over their rents and profits. He then proceeded to deal with the houses after her death as follows:—"In the event of the decease of my wife Navivahu, my sons Damodar and Dayabhai may take in equal shares half and half the income that may be received and the heirs also of both of these my sons may always take the income from time to time, and may divide and take it up. To the same no one has any claim or title." With regard to this clause, the appellate Court held that the Division Court (Mr. Justice Candy) was correct in holding that under the clause, the two sons of the testator took only a life-interest in the houses as tenants-in-common, and that the ulterior interests therein, not being disposed of, fell unto the residue. Gift of the income of property in general terms carries with it a gift of the property itself only where the will affords no indication of an intention that the enjoyment of the bequest should be of limited duration. In the result, the High Court construed the clause to the effect that the testator, when he gave the income of the houses to his sons equally, did not intend to give to them the houses themselves, but desired that their enjoyment of the houses should be in point of time co-extensive with their respective lives. As to the bequest of the residue, it was urged that the sons took absolute estates in the residue as tenants-in-common, and that the defeasance did not operate, but (varying the decree of *Candy, J.*) the appellate Court held that the construction that the testator's sons took only life-estates in the property which they were to divide and take under cl. 13, and which he of his free will gave them by cl. 18, and which under the same clause, they were to

Will—continued.

—3.—**Construction**—*continued.*

divide and take, would give better effect to the intention of the testator than to hold that the sons took absolute estates so as to enable them to will away the whole property to strangers or to favour their daughters at the expense of the sons. The Court therefore declared that the two sons of the testator, the appellant and the first respondent, took only a life-estate in a moiety or half share of the residuary estate, that, if the appellant Damodardas die without leaving a son, his moiety in the residuary estate will devolve upon his brother Dayabhai if then alive, or, if the latter be then dead, upon his son, Karsandas (if then alive), and that if Dayabhai should die without leaving a son, his moiety will then devolve upon his brother the said appellant Damodardas (if then alive). DAMODAR DAS TAPIDAS v. DAYABHAI TAPIDAS, **21 B. 1.** [*Reversed*, 22 B. 833, P.C.]

(99)—*Gift to sons or daughters of a person who may be alive at his death—Gift to class to be ascertained at future time—One member of such class in existence at testator's death—Hindu Wills Act* (XXI *of* 1870), *s.* 3—*Succession Act* (X *of* 1865), *s.* 98.—P bequeathed his property to trustees in trust to M and after her death to her children. At P's death. M had a daughter C living. Subsequently M had a son who died shortly after. On M's death, P's heir claimed the property in preference to C on the ground that the bequest to M's children was invalid as being a gift to a class. *Held* that C was entitled, and not the plaintiff, because the primary intention of the testator was that all the members of the class specified (*i e.*, the children of M) should take and his secondary intention was that if all could not take, those who could should do so. Here, there was one member of the class who could take the property, and it must, therefore, be inferred that the testator meant that she should take it rather than that his intention should be defeated altogether. MANGALDAS PARMANANDAS v. TRIBHUVANDAS NARSIDAS, **15 B. 652** [*R.*, 18 B. 7, 22 B. 533, 32 C. 992=9 C.W.N. 749=1 C.L.J. 482.]

(100)—*Construction of Will—Clause giving over income from house to testator's sons—Residuary estate, whether life estate only or absolute estate conferred on sons.*—This suit had been brought by the respondent, one of the sons of a Hindu testator of Bombay, for the construction of a Will made by his father. The suit was filed in the High Court on its original side against the plaintiff's brother with whom a son of the plaintiff was also impleaded as co-defendant. The decree of the original Court was varied on an appeal to an appellate Divisional Bench of the High Court whose judgment has been reported in I.L.R. 21 B. 1. On this appeal to the Privy Council from the said judgment, the main question related to the interest taken by the sons in the residuary estate, *i.e.*, whether their interests therein were absolute or only amounted to a life-estate. The original Court and the appellate had both held that

Will—continued.

—3.—**Construction**—*continued.*

the sons took a life-interest, in certain houses under the Will, as tenants-in-common, and that the alterior interests therein not being validly disposed of fell into the residue. This construction of cl. 8 of the Will was not disputed before their Lordships and the contention before them related to cls. 13 and 18 of the Will. Cl. 13 was held to be inapplicable under the circumstances. The appellate High Court had held that the construction that the testator's sons took only life-interests in the property which they were to divide and take under cl. 13, and which, the testator of his freewill had given them under cl. 18 would give better effect to the intention of the testator than to hold that the sons took absolute estates therein. Their Lordships, however, doubted whether the words in cl. 13 following the direction therein that the sons may divide and take the whole of the residue in equal shares, clearly showed at all that only a restricted interest was intended to be given to them. They were of opinion that cl. 18 was the one applicable to the residue and that clause distinctly gave the residue to the sons in equal shares absolutely, except in the case of the subsequent birth of a son or a daughter. Reversing the decree of the High Court that had held that the sons of the testator took only a life-interest, their Lordships declared that each of the sons took an absolute interest in a half-share of the residuary estate of the testator. DAMODARDAS v. DAYABHAI, **22 B. 833, P.C.=2 C.W.N. 417=7 Sar. 308.**

(101)—*Gift over.*—Under a will the residue after the payment of certain legacies, was divided into three shares, with respect to one of which trusts were declared in favour of the wife (plaintiff) and children of the testator's son Husseinbhai. The testator directed a trust-deed to be made in respect of this share. He also directed that out of the share a sum of Rs. 60,000 should be specifically dealt with as therein mentioned, and provided that "out of the said income (a sum) to the extent of Rs. 300, namely, three hundred, shall be paid every month to Husseinbhai's wife for (her) household expenses and for the education of (her) children." The will further provided: "If Husseinalli should not have any son or after having a son should he die without leaving any son, then . . I give the whole of the remaining property to my son Mahomedbhai and his younger brothers and in the same manner after the decease of Husseinalli and his wife I give the said sum of Rs. 60,000 also to him and them." Husseinbhai had no son at the date of the testator's death. He died leaving him surviving his wife (the plaintiff), a daughter and a son. The son died an infant a few months after Husseinbhai's death. Under these circumstances, the plaintiff claimed that she was entitled to a one-third share of Rs. 60,000 and to Rs. 300 a month during her life; *Held*, (1) that the plaintiff, as the heir of her son on whom Husseinbhai's interest devolved, was entitled to the one-third claim-

Will—continued.

——**3.—Construction**—*continued.*

ed by her in the balance of Rs. 60,000 ; (2) that from the time when the above-mentioned one-third was handed over to her, there should be a proportional abatement in the amount of Rs. 300 which was payable to her every month during her life. MAHOMEDBHAI v. FATMABAI, **8 Bom. L. R. 613.**

(102) — *Will— Construction— Gift over on failure of prior devise—Rules of construction.*— The terms of a will made by a person were " I appoint my brother N sole executor of my estate and effects after my decease, who shall pay all my legal debts and collect all outstandings ; my wife is supposed to be in the family way and, should she bring forth a male issue, in that case he will be my sole heir of property and effects on his attaining proper age. If, on the other hand, she is delivered of a female child, all the expenses of the marriage and maintenance till that period should be defrayed from my estate. .....*In case my son dies before attaining proper age, all my estate and property should be taken possession of by my brother.* My wife..... is to be maintained from my estate if she continues to live in our family dwelling house under my brother's protection." *Held*, on the birth of a daughter to the widow of the testator, (*a*) the clause in italics purported to give the property itself to the brother, the power of management having been already given him in appointing him executor ; (*b*) the provision for the maintenance of the widow and marriage expenses of the daughter tend to show that they were not to take the larger estate which they would take successively as heiresses ; (*c*) the gift over to the brother takes effect on failure of the gift to the son, in whatever mode that failure takes place, even if it be not in the precise manner expressed in the terms of the gift. (*Jones v. Westcomb*, 1 Eq. Cas. Abr. 245). [*F*, 3 C.L.J. 502=10 C.W.N. 695=33 C. 947.] Courts ought not to construe the clauses of a will in such a way as to reduce some of its provisions to a dead letter, if they can construe them in such a way as to make them operative. The Courts in this country should not be more strict in construing wills than are the Courts in England. On the contrary Courts should endeavour in the case of every will to find out what the real intention of the testator was which he intended to express in his will, and to look to that rather than to the precise language he has used. OKHOYMONEY DASSEE v. NILMONEY MULLICK, **15 C. 282.**

(103-4) —*Wills—Gift for indefinite time carried absolute estate—Charge on testator's estate for payment of annuities—Vesting of contingent interest—Infringement of rule against perpetuity—Effect not to be given to such intention of testator.*—A Will contained the following :— " That a monthly stipend of Rs. 15 be paid to my daughter Mrs. Eliza Stent, for her own benefit, Rs. 20 for the benefit of her two children during their minority. In like manner, my daughter Mrs. Maria D'Monte to be allowed by my executors monthly the sum of Rs. 20 for her own benefit, and Rs. 50 for the benefit of her five children, and in the event of the demise of any of the abovenamed children occurring, the sum of Rs. 10 to cease rateably as being the allowance for each child. That on each of the children attaining their age of majority of one and twenty years, I request that my executors pay to each of them, severally and proportionately, the full amount of interest accruing from my estate, the existing provision for my two daughters to continue during their natural life, and after their demise the said interest in like manner to revert to their heir or heirs in succession." *Held* that where there is in terms a gift of the interest or dividends or produce of the estate, and that gift is indefinite in point of time, such a bequest will generally carry the corpus absolutely ; but where, on the other hand, the gift is in terms simply a gift of so much a year, its effect is to give an annuity for life only. The daughters of the testator were, therefore, entitled to Rs. 15 and 20 a month respectively, and the testator's estate was charged with the payment of the said sums. The daughters were further entitled to receive during the life-time and minority of their children the sum of Rs. 10 for each child ; but on the death of each child, or upon its attaining majority, the payment in respect of such child ceased. There could be no intestacy except in the event of all the children dying under twenty one. *Held* also that the interest of each child vested only on that child's attaining the age of twenty-one years and not before. There was no prior gift. The time mentioned in the clause "each child attaining that age, I request my executors to pay" was annexed to the legacy itself and not to the mere payment. What was given to each child was the proportionate share of that child in the full amount of interest accruing from the testator's estate. The amount of the share which would vest in each child at twenty-one depended on the number of children then living. Each child further took a contingent interest in the shares of each of the other children, which might become vested on the death of each one dying under twenty-one. *Held* further that the testator probably intended that the corpus of his estate was to remain for ever in the hands of his executors or their representatives and that the descendants of his daughters' children were in perpetual succession, to enjoy only the interest arising therefrom. But, if such was his intention, that intention could not be carried into effect. Consequently, the children took absolutely the estate given to them. *Semble*, the rule in *Wild's case* did not apply to personalty. AGNEW v. MATTHEWS, **1 M.H.C. 17.** [*D.*, 15 M. 448.]

(105)—*Bequest for life—Power of appointment—Validity—Gift over on failure of appointment—Effect—Bequest of residue of moveable property to be divided equally between two sons*

Will—continued.

——3.—**Construction**—*continued.*

and then to next of kin—Codicil—Validity of bequest.—Under his Will, A (a Parsi) bequeathed a certain house (1) to his executors on trust to pay the income to his two daughters B and C in equal portions, and after their death (2) "to the use of such of the issues only of the said B and C as they should respectively appoint, such appointment to affect their own respective moieties only and not that of the other of them" and, (3) in default of appointment, on trust to dispose of the house and divide the proceeds according to the directions mentioned in the Will. *Held* that B and C were each of them entitled to one-half of the house for her life and that, under the power of appointment given to them, each can appoint to one moiety of the house among her respective children in such way as she may think fit, and that, even if the power of appointment had been invalid, the gift over, on failure of the exercise of the power was valid. X (a Parsi) bequeathed the residue of his moveable property to his executors in trust to apply a certain sum for the maintenance of his son R until he should attain the age of 21, and, upon his attaining that age, to pay over the income of the property to him, and, after the death of R, in trust to divide the *corpus* of the property among the next-of kin of R. A codicil subsequently executed by the testator directed the executors to divide the income of the property to his two sons R and N, instead of the same being given exclusively to R. *Held* (1) that, reading the Will and codicil together, what the testator meant was that his two sons R and N were each to have a moiety of the income for their respective lives, and that, on their respective deaths, one moiety of the *corpus* was to go to their next-of-kin under the Parsi Succession Act (XXI of 1865). *N B.*—No declaration was made to that effect, because it would not be binding on any children who might be born to R, who, at date of suit, was unmarried. BYRAMJI JEHANGIR LAMNA v. RATNAGAR JAMSETJI RATNAGAR, **18 B. 1.**

(106)—*Construction—Nature of estate created—Gift to adopted son if valid—Person not in being.*—The terms of a Will were that the testator's widow may adopt a son who has to take a life-interest in the estate till he begot a son when his estate was to become absolute, that until adoption the estate during the widow's life should be held by the executors in trust for the person or persons who will become entitled thereto under the conditions of the Will, and that, if the widow died without adopting or if the other dispositions of the Will were to be held invalid, the estate as to which there was intestacy should go to N and R. The testator died in 1888 and the widow adopted a son in 1900. *Held*, in construing the Will as to the estate taken under it by N and R, that the clause creating the trust referred to two periods, one till adoption and other the lifetime of the widow, and the estate of N and R could not be

Will—continued.

——3.—**Construction**—*continued.*

held to be absolute in any event during the lifetime of the widow. It was, therefore, not necessary to consider whether an absolute estate once created can be divested by the happening of an uncertain event such as adoption. (8 I.A. 46, 10 M.I.A. 279, 12 I A. 198, *R.*) Though the adopted son was not actually in existence at the death of the testator, the gift to him is valid since his title relates back to the death of the testator in the eye of the law. (21 B. 319, *R.*) A Hindu can create a life-interest in his estate. (*Tagore Case*, 9 B.L.R. 377, *R.*) The effect of the possible death of the adopted son during the life of the widow it was not necessary to consider, but it was observed that there would be no abeyance pending a second adoption as contemplated by the Will but, the estate would vest in the ultimate devisee according to the terms of the Will or in the heirs of the intestate owner. SARAT CHUNDRA MULLICK v. KANAI LALL CHUNDER, **8 C.W.N. 266.**

(107)—*Will—Construction—Gift to person to be adopted—No adoption—Effect—Gift by implication—English and Indian Law—Difference.*—The material portion of a Will of a Hindu testator who died leaving a widow, was as follows:—"My wife is supposed to be pregnant with child, if a daughter be born, she will, in that case, adopt the twin mentioned below (the plaintiff and S) and whatever property there shall exist, consisting of moveable and immoveable, etc., my executors shall divide into three equal shares, and give the same to the daughter and adopted sons on their attaining the age of majority." The widow bore no child. After the death of S, plaintiff who had attained majority, brought a suit for declaration of his title [*R.*, 9 C.W.N. 309] on the allegation that he was adopted by the testator's widow and his executrix and contended that he, whether adopted or not, was entitled to the testator's property, or to a moiety of it under the terms of the Will. It was found that plaintiff was not validly adopted. *Held*, that the testator simply provided for the anticipated contingency of the named persons being his legal heirs by adoption and omitted to say anything of the alternative and that there was not any indication that he intended them to take his property in all events, *i e.*, whether they became his adopted sons or not and that there was no gift by implication to the plaintiff. When an Englishman in his Will acknowledges one to be his heir, or speaks of him as taking in the capacity of heir, there can be no other meaning in the testator's words than an unqualified intention that person should have his property. On the other hand, when a Hindu directs that that one should be adopted as his son, and assumes that this person, when so adopted, will take his property as heir, this is something more than an indirect way of pointing out the person to whom he intends his property to go. It implies the intention that

Will—continued.

——3.—**Construction**—*continued.*

the person named should take upon his attaining the character of adopted son, not that he should have the property irrespective of his capacity to render the peculiar consideration for it, which the lawful adoption alone would enable him to give. ABHAI CHARAN GHOSE v. S. M. DASMANI DASI, **6 B.L.R. 623.**

(108)—*Construction of deed — Adoption—Limitation Act, sch.* II, *art.* 91.—I.S. executed a deed in favour of the defendant in the following terms :—I have no son of my loins and have adopted D.S. (the defendant), but the condition is, that, after my death, my widow will remain in possession of my property during her lifetime, and on her death, he will obtain possession." On the death, of I. S's widow, the plaintiff brought a suit against the defendant for his share in the property of I.S. The defendant resisted the suit on the grounds that the deed operated as a will, and that the plaintiff not having sued to have it set aside for more than three years after he became aware of its existence, his suit was barred by art. 91, sch. II of the Limitation Act. *Held*, that the deed was purely and simply a deed of adoption and that it had no legal effect as a will. *Held* also, that even if there was a bequest to the defendant, it being admitted that I.S. had not adopted the defendant, the gift could not take effect. *Held* also, that art. 91, sch. II of the Limitation Act, has no application to the case of a will. MARJAD KUAR v. KALKA BAKHSH SINGH, **4 O C. 6.**

(109)—*Estate vested in trustees— Devisee given the income—Nature of estate of devisee—Construction of Will.*—Some of the executors and trustees under a Will instituted this suit praying that certain clauses of the Will may be construed, that the testator's estate may be administered and the trusts under his Will carried out. The main question turned on the construction of certain clauses with a view to determine the interest taken by the testator's sons. The Judge of the Division Court held that the sons took an absolute estate, subject to the charges created by the Will. He proceeded on the ground that, as the rest of the gift to the son's heirs in the testator's family, and, in default of male heirs, to charitable purposes, was void, it had to be struck out, and in that case the gift to the sons would be in terms an estate of inheritance. The High Court, however, was of opinion, that even assuming the devise to be void to the above extent, that could not, by itself, render the estate given to the sons one of inheritance. The circumstance that by the Will the estate was vested in the trustees, and that the income alone was expressed to be given to the sons as maintenance, precluded the estate given to them from being regarded as an absolute estate. VULLUBHDAS DAMODHAR v. THUCKER GORDHANDAS DAMODHAR, **14 B. 360.**

(110)—*Construction — Vesting of estate in executor—Directions to executors, effect of.*—A

Will—continued.

——3.—**Construction**—*continued.*

testatrix, after appointing certain persons to be executors of her will in respect of the whole of her property, directed that they should "take possession of the whole of her property, and keep the same under their protection ;" that they should pay out of her estate the charges of interment, etc.; that they should repair four houses annually out of the income thereof, having let them out to hire, and after paying taxes and ground-rent divide the proceeds every three months between the testatrix's two sons; that the executors should not give the rents to the creditor, because the bequest of the income to the sons was "not an entire gift to them but a mere provision for their support." The will proceeded as follows : "Should my son M happen to die before the decease of his wife, then I give the share of M to his widow H. M, etc., and after the death of H.M, should my son M not have left any legitimate male child, then I give the above share to my son, J, etc. After the death of M (and his wife) should he have left legitimate male children, such male children shall in the same manner receive the income once in every three months till they attain the age of 21 years, and then the amount of their share shall be divided into equal portions, and each of them having become the owner of his portion shall receive the same from my executors, but if H. M. die before M and M die without having had legitimate male children, then I give and bequeath the shares of my son M to my son J as a provision for his support, etc. If my sons M and J die without having male issue, and if their wives, that is to say, H. M. and C. J. die without having male issue begotten by my sons, then I give my garden, etc., actually and entirely to the sons and daughter of my daughter G, begotten by her first husband G. A. that is to A, M, B and N, or in case of their death, to their sons and daughters lawfully begotten, or to such of them as shall survive at the time. My said garden shall be divided into equal shares, and each of them having received his share in equal proportion as a legacy from me, shall enjoy the same." M and H. M, his wife, died without having left any children ; J died in the lifetime of M.A. and one of the sons of G died without leaving children in the lifetime of H M. *Held*, firstly, that the direction to the executors to lease the property indefinitely and out of the income to make repairs, pay taxes and ground-rent, and apply the rent to the maintenance of the sons, was sufficient to vest the legal estate in the trustees, secondly, that such estate was an estate in fee ; thirdly, that the children of G took equitable estates in remainder in fee, defeasible in case of their death in the lifetime of the first taker for life, in which event there was substituted a devise to their children in fee ; fourthly, that the children of G took as tenants-in-common, and not as joint tenants, and therefore that, as there was nothing from which cross-remainders between the children of G

Will—continued.

——3.—**Construction**—*continued.*

could be implied, the share of A reverted to the heir-at-law of the testatrix. Fifthly, that wherever any estate in fee is devised to a trustee in trust without any limitation of the estate of the *cestui que trust*, the latter takes the beneficial estate in fee. SHIRCORE v. ADMINISTRATOR GENERAL, **1 Ind. Jur. O. S. 50.**

(111)—*Interest not subject to be divested.*—A testator nominated A B, etc., "to be executors and trustees of this my will, and eventually guardians of my dear children and estate, until such time as my childern shall severally attain the age of 25 years, when I request the aforementioned gentlemen (my wife being dead), their heirs or executors, will divide or cause to be divided, into shares agreeably to the number of our surviving children, giving to the boys two shares and to each of the girls one, or to their lawful issue or husband, the whole of my estate, each child to be put in possession of his or her share when they shall respectively attain the age of 25 years; and whenever either of my daughters shall enter into the holy state of matrimony. I request that a proper settlement may be made upon her and her children, and in the event of either of my children departing this life without leaving husband, wife, or lineal descendants, her share shall be divided equally amongst our other children or their lawful issue; but on no account shall any division of the principal of my estate take place till after the death of their mother. *Held* (reversing) the decision of (*Phear, J.*) that, after the mother's death, each child took a vested interest on attaining the age of 25 years, that is, at the time when possession is to be given, and not an interest subject to be divested in the event of the child dying without husband, wife, or lawful issue. TAYLOR v. PHILLOTT, PHILLOTT v. MORRIS, **1 Ind. Jur. N.S. 375.**

(112)—*Will, Construction of—Bequest to executors and trustees in trust for son of testator and his widow—Life estate—Estate in fee—Control and management of executors and trustees.*—A Hindu by his Will bequeathed certain property to his executors and trustees "upon trust for my son T and his heirs from the time of my death to allow him to occupy and use the same, and to enjoy the income thereof and after the death of my son T, in trust to allow his widow to occupy and use the same and enjoy the income during her life; but if the said T shall die without leaving male issue him surviving, then in trust after the death of the survivor of them without leaving such male issue, to my son P and his heirs according to the rules of Hindu law." The sons T and P both survived the testator, and T (the defendant) at the date of the suit had a wife living and three sons living. Under the above clause he claimed to be absolutely entitled to the property mentioned therein, subject to the interest of his widow for her life. The plaintiffs (the executors and trustees) contended that, as trustees, the legal estate in the

Will—continued.

——3.—**Construction**—*continued.*

property was vested in them, and that the defendant had only a life interest in the property. *Held* that the defendant T took only a life interest in the property. The words "in trust for T and his heirs" which, standing alone, would create a fee in T must be read with the words immediately following, "to allow him to occupy and use same and enjoy the income thereof and after his death to allow his widow to enjoy the income during her life," which words show a clear intention that T should only take life interest to be followed by the same interest in his widow after whom the heirs of T would take as purchasers. *Held*, also, that the trustees were intended to take the legal estate and to have the control of the property, allowing T to enjoy the income of it. F. YORKS SMITH v. TRIBHOVANDAS MANGALDAS, **19 B. 401.**

(113)—*Will—Testator's directions—Power of appointment, execution of—Construction of will in favour of children of a deceased child of testator.*—Where a testator, among other bequests, gave a share to a daughter, such share not being transferable during her life-time, and the interest only going to her, and authorised her, in the event of issue, to bequeath the share to any one of her children, but, by a settlement made in consideration of her marriage, her share was assumed to be assigned to trustees in the settlement, and a joint will by herself and her husband constituted the survivor of them the executor and sole heir of their estate together with their issue, it was held that—(*a*) the marriage settlement had no operation on the daughter's share, as it could not be transferred during her life-time, according to the testator's direction and (*b*) the daughter did not properly exercise her power of appointment by the joint will, and that her sole surviving child took her whole share. The Court should always favour a construction, which will give the share of a child, on his death, to his children, and a slight indication of such an intention should be sufficient, for the purpose of giving a fund to the issue of the deceased child, who in his life-time enjoyed it. FEHRSEN v. SIMPSON, **4 C. 514.**

(114)—*Will providing for forfeiture on female member of family living outside house—Wilful living contemplated.*— In this case, what was contemplated by the will of the testator which provided that if any of the female members of his family, either from misunderstading or for any other reason, lived in any other than a holy place for more than three months she would be deprived of all his properties, was a wilful, deliberate and intentional living. So, the residence of a widowed daughter-in-law (a minor) of the testator with her mother for more than three months consequent on her removal from the testator's house by her maternal relation and brother with the police aid, though in contravention of the direction of the testator, ought not to be treated as

Will—continued.

——3.—**Construction**—*continued.*

working a forfeiture. GOWRI DASSEE v. KRISHNA BHABINI, **20 C. 15.**

(115) —*Devise in favour of defendant to take effect if female and not male child be born to the testator—Birth of male child that died the same day—Devisee not entitled to succeed.*—The will in this case provided that, in the event of a son being born to the testator, such son would succeed as heir, but if a daughter be born, that the defendant would then succeed to the testator's occupancy rights and other property. It appeared that the testator's wife who was pregnant at the time of the execution of the Will gave birth to a male child which died the very day on which it was born. The defendant contended that he was entitled to succeed to the property because the clear intention of the testator was that the defendant was only to be excluded if his widow gave birth to a male child capable of living and of inheriting, and that as the child happened to die on the same day that he was born, the case should be determined as if the event contemplated by the testator as causing the defendant's exclusion had not happened. *Held* that the defendant was not entitled to succeed under the will, as the devise to him was only to take effect if no male heir was 'born' to the testator. Such an heir was born alive, and although he may have died immediately afterwards, the very fact of a completed birth was sufficient to vest the estate in him and to constitute him the *propositus* from whom descent should thereafter be reckoned. ALA BAKSH v. MUHAMMAD SHAH, **181 P.R. 1882.**

(116)—*Gift to woman, Rule as to—Applicability to wills in favour of women.*—In the case of gifts as in the case of wills, the well established rule must be followed, *viz.*, that, in the absence of express words showing such an intention, a gift to a woman does not confer an absolute estate of inheritance which she is enabled to alienate. ANNAJI DATTATRAYA v. CHANDRABAI, **17 B. 503.** (5 C. 684, *R.*) [*Expl.*, 32 C. 1051=9 C.W.N. 784=2 C.L.J. 50; *R.*, 19 B. 36, 1 Bom. L.R. 303, 3 Bom. L. R. 790, 6 Bom. L R. 625, 6 Bom. L.R. 975=29 B. 306, 1 S.L.R. 211, 9 O.C. 119; *D.*, 22 B. **984.**]

(117)—*Trust — Uncertainty.*—No trust is created by the words in a will "The executors should give my brothers, their wives, and children, according to their (executors) wishes." KUMARASAMI v. SUBBARAYA, **9 M. 325.**

(118)—*Will, Construction of—Trust.*—Technical language is not necessary to create a trust. Words of recommendation, request, entreaty, wish or expectation, addressed to a devise or legatee, will make him a trustee for the person or persons, in whose favour such expressions are used, provided the testator has pointed out, with sufficient clearness and certainty, both the subject matter and the object or objects of

Will—continued.

——3.—**Construction**—*continued.*

the intended trust. Where, therefore, a testator stated in his will, "I give to my dearly beloved wife the whole of my property, both real and personal, including my G. P. Notes, Delhi Bank shares etc., feeling confident that she will act justly to our children in dividing the same, when no longer required by her," and she, by her will, left the Bank shares to one of her children; *held* that the first will gave the widow a life-interest only in her husband's property, that she became a trustee of his estate, with a power of appointment in favour of her children, and that the Bank shares devised to one of her children, could not be sold in execution of a decree against the executors of the widow's estate as portion of her estate. (References:—*Curnick* v. *Tucker*, Law Rep. 17 Eq. 320; *Knight* v. *Knight*, 3 Beav. 172=11 G. & F. 513, cited in Tudor's Leading cases in Equity, 4th Ed., Vol. II. 949; *Le Marchant* v. *Le Marchant*; Law Rep. 18 Eq. 414; Jarman on Wills, 3rd Ed., Vol. I, 356; *Fox* v. *Fox*, 27 Beav. 301) cited in Lewin on Trusts, 6th Ed. 121.) RAYNOR v. THE MUSSOORIE, BANK, **2 A. 55.**

(119)—*Creation of trust fund—Rule against perpetuities—Case of construction of a will.*—A testator directed by his will the creation of a trust fund in a certain Bank, and that such trust fund shall never be removed from deposit in the said Bank so long as it shall exist. The fund was to be a continuing fund for all time, and the interest from it was to be enjoyed by certain legatees and the same was to be inherited by their children from one generation to another in accordance with all legal right. There is nothing illegal about the creation of such a fund, except the direction that the securities should never be received from deposit, which, as an attempt to create a fund in perpetuity, was invalid, but this does not prevent the intention of the testator from being carried out, and the legatees take an absolute estate. ADMINISTRATOR - GENERAL OF MADRAS v. MONEY, **15 M. 448.**

(120)—*Void residuary bequests—Gift to a class—Religious trusts—Trusts for maintenance—Perpetuities.*—A testator by his will directed as follows:—"To my daughter A. B. I give the interest on a Government promissory note for Rs. 3,000 to be paid to her, as the same becomes due, during her life, and, if at her death, there be any male issue of hers living, I give the said promissory note to be divided equally among them if more than one and if there be no such male issue living at the death of the said A.B., the said security for Rs. 3,000 shall thereupon fall into the general residue of my estate." He also directed, after having bequeathed five one sixth shares of his estate to his younger sons that "the remaining one-sixth share shall be retained by my executors, and the income thereof accumulated and invested in Government securities until the son or sons of my eldest son H, if he shall have any sons,

Will—continued.

——3.—**Construction**—*continued.*

shall attain full age, and shall thereupon be paid to such son or sons, if more than one, in equal shares; and in case no son be born of my said eldest son or no son shall attain full age, then, such one-sixth share shall, on the death of the said H, be divided equally among such of my five other sons as shall then be living, and the male issue of such of them as shall then be dead such male issue taking the share of their respective fathers." Then, after reciting that he was desirous of making, out of his immoveable property, permanent provision for the benefit of his five younger sons and their male descendants, and that he was desirous of having the due forms of worship carried out after his death, he further directed that certain lands should be held by his executors on trust to apply the rents and profits (1) in the celebration of certain poojahs and in the performances of periodical turns of worship of the family Thakoors and other religious festivals, at the same expense and on the style same as the testator himself had done, or at such expense and in such style as the executors should think fit, and (2) in the maintenance, out of the surplus, of the five younger sons, their wives, sons, and male descendants, and female descendants until their marriage. *Held* that the bequests to the children of the daughter and to the children of H were void. CHUNDRAMONEY DOSSEE v. MOTILAL MULLICK, **5 C.L.R. 496.** [*D.*, 7 C. 269.]

(121)—*Construction of will—Precatory words.*—In order to create a precatory trust, the words of gift used by the testator must be such that the Court finds them to be imperative on the first taker of the property, and the subject of the gift over must be well-defined and certain. Accordingly, where a testator made a gift in these words: "I give to my dearly beloved wife the whole of my property, both real and personal, feeling confident that she will act justly to our children in dividing the same when no longer required by her . . . ." *Held* that the widow took an absolute interest in the property, and that no trust for the benefit of the children was created. THE MUSSOORIE BANK v. ALBERT CHARLES RAYNOR, **4 A. 500, P.C.=9 I.A. 70=4 Sar. 346.** (2 A. 55, *Reversed.*) [*R.*, 9 M. 325, 14 C. 222.]

(122)—*Will confirming trust-deed—Construction of deed—Forfeiture.*—S. being desirous of securing and settling his property, executed a deed of trust whereby he conveyed and assigned all his real and personal property unto trustees, upon (among others) the following trusts; that immediately after his death the trustees should convey, assign, transfer, and make over all the premises mentioned in the deed unto such person or persons as S, should, by his last will, attested by two witnesses, direct and appoint, and in default of such direction and appointment, unto the next heirs of S. their heirs and assigns, for ever, and in the meantime to pay the Government revenue out of the rents and

Will—continued.

——3.—**Construction**—*continued.*

profits of the real property and employ the residue and accumulations as well as the produce and accumulations of the personal property "in such a manner as may procure the daily worship of the household idols" mentioned in the deed, and pay what they considered a fair and proper sum to the wives and family of S. living at his death and residing in the family dwelling-house. By his will, dated the same day as the deed, S. declared that he ratified and confirmed the deed, subject to such provisions as were contained in his will, which were that the trustees should not charge the fund for the maintenance of those who should not live in the family dwelling-house and for the appointment of new trustees *Held*, first, upon the authority of *Wilson* v. *Pigott*, 2 Ves. Jun., that the powers of the trustees (under the deed) did not cease on the death of S. and that the directions in the will, although, not strictly within the words, amounted to a good appointment in equity, so that instead of the trustees of the deed conveying the property on the death of S. to his son, they should contrive to hold subject to the trusts of the deed as modified by the will. Secondly, that the words "in such a manner as may procure the daily worship," etc., meant in such manner as shall be sufficient to procure the daily worship, etc., and that the trustees were not authorized to apply such portion of the trust funds as they in their discretion might think fit, but only such portion as was reasonably sufficient for those purposes. General debts and liabilities are not charges against property forfeited upon conviction of felony. HURRYDOSS BONERJEE v. HOGG, **1 Ind. Jur. O. S. 86.**

(123)—*Bequest to orphan in Military Orphan Asylum—Direction to trustees.*—A special case was stated for the opinion of the Court as to whether S. M took a vested interest in the sum of Rs. 6,325 under the following clause of will: I paid to the M. O. Society Rs. 6,000 for S. M. and invested Rs. 6,826 the interest on which I directed to be paid to the mother of S. M. Now I direct my trustees, after the death of the mother of S. M. to realize the latter sum and pay it to the M. O Society, for S. M. in terms of the regulations of the Society." *Held*, that the bequest was *prima facie* for the benefit of the daughter; that having regard to the regulations of the M. O. Society, the bequest was a gift for the benefit of the Society generally, that if the will had given the mother the interest for life, instead of saying it had been given, it would have vested, that the interest vested in S. M. at once, and formed part of her estate. *In the matter of the goods of* COLLINS, **Bourke O. C. 104.**

(124)—*Construction of — Trust — Provision that devisee should not have power to dismiss certain servants.*—*Held*, that a clause contained in a will by which the testatrix provided that the person to whom the life estate in the property dealt with by the will was devised should not have power to dismiss a certain old

Will—continued.

——3.—**Construction**—*continued.*

servant would not, the employment being of a purely personal nature, in the absence of words indicating a clear intention of the testatrix to that effect, create any trust in favour of the servant. RAM DULARI v. MULOO, **A.W.N. 1905, 228=2 A.L.J 637.**

(125)—*Wish—Creation of trust—No release*—Where a testator directs by his will that the debt due and owing to him by an attesting witness of the will, should not be claimed, demanded or enforced, but that his (testator's) wish is that the sum should be specially devoted by the said attesting witness to the education of his children, the debt does not become a legacy, so as to become void, but creates only a trust in favour of the children of the attesting witness. THE ADMINISTRATOR-GENERAL v. LAZAR STEPHEN, **4 M. 244.**

(126)—*Bequest to wife for her sole and separate use—Re-marriage—Husband, whether trustee for wife — Construction—Property given to unmarried woman for her sole use and benefit.*—A Will contained a bequest in the following terms:—"I give, devise and bequeath to my dearly beloved wife all the stock in-trade, furniture, mourning coaches, horses belonging thereto, stones, marbles, tools, implements and materials connected with my trade and business and all my right and interest therein, and after payment of my debts and other expenses, I give devise and bequeath the rest and residue of my outstandings and collections *for her sole use and benefit*, with liberty to continue and carry on such trade and business." The testator's widow continued with the assistance of the defendant to carry on the business until, in October 1860, she married the defendant; they lived together until June 1867, when, in consequence of alleged ill-usage, the plaintiff separated from the defendant. Then, she brought a suit against her husband for a declaration of her rights under the Will, for possession of the stock-in-trade and other property connected with the business and for an account from the defendant of the said business commencing from October 1860 to the time of the suit. *Held*, that according to the true construction of the Will, the stock-in-trade and the liberty to carry on the business were not bequeathed to the wife for her sole and separate use independent of any husband that she might afterwards marry, and consequently that the husband did not become a trustee for the wife in respect of the business and stock-in-trade and that he should not be called upon to render an account to his wife of that business from the time of her marriage. *Quære*:—Whether if stock-in-trade were given to an unmarried woman for her sole and separate use any profits realized by carrying on the business would be vested in her for her separate use, so that, in the event of her marriage without settlements, the property would not pass to the husband? ORD. v. ORD, **4 B L.R.O.C. 53.**

Will—continued.

——3.—**Construction**—*continued.*

(127)—*Trust—Feast to relations—Discretion of trustees as to expenditure—Court's jurisdiction to transfer.*—A testatrix directed by his will, among other things, as follows: "My said trustees shall also hold an annual *Mijlas* or a meeting of the whole of my relations and acquaintances and feast them in Bombay...and shall incur and pay such expenses in connection therewith as they may think proper and defray the same out of the income of the said trust properties." To this it was objected that the testatrix could not have intended that the trustees were at liberty to spend the income of the trust properties without any limit; and that, therefore, the Courts should fix some limit to the annual expenditure on this head: *Held*, that the testatrix had reposed in the trustees a discretion in the matter; and so long as that discretion was properly and honestly exercised the Court could not fetter it by fixing a limit to their expenditure, but must leave it to the trustees to determine how much should be spent on the feast every year. MAWJIBHAI v. MULJIBHOY, **4 Bom. L.R. 199.**

(128)—*Bequest in favour of the Collector of a District—Whether bequest in favour of Government—"Collector" meaning of—Legatee—Beneficiary—Trustee—Lost Will—Will traced to the testator's possession—Not coming forth at his death—Presumption—Revocation—Evidence—Declarations of testator that he had revoked the Will not admissible—Probate and Administration Act* (V *of* 1881), ss. 21 *and* 41—*Legatee interested only in a portion of the testator's property—Grant of the letters of administration for the whole property—Court Fees Act* (VII *of* 1870), s. 19 (I) (1)—*Court-fee not paid—Application can be heard.*—S. 19 (I) (1) of the Court Fees Act is no bar to the *hearing* of an application for the grant of probate or letters of administration, if proper Court-fee has not been paid. If the petitioner undertakes to pay such Court-fees as may be found due if his application is accepted, the Court will hear the application. A Will provided: "The executrix will pay out of my estate into the hands of the Collector of Lucknow Government promissory note of the value of Rs. 1,00,000. The said Collector will realise for ever and anon the interest on those notes, will establish an educational institution or school in my.....Lalta Prasada *walla* house and pay out of the interest.....monthly for the expenses thereof.. ..will pay out of the balance.....monthly for the expenses of...two *shivalayas*..... If it is considered necessary to modify in any way those expenses, the said Collector will do so..... The said educational institution shall be named—school. The Collector shall have full power in the management and working of the said school. For the purpose of building house.....for the school.....the executrix shall pay into the hands of the said Collector Rs 2,500 out of my estate." *Held*, (1) that the provisions of the Will were not vague or indefinite, and that the bequest was in favour of a specified or definite person; (2) that the

Will—continued.

—3.—**Construction**—*continued.*

bequest was not made in favour of Government but in favour of the "Collector of Lucknow," meaning the person who for the time being held the Office of the Deputy Commissioner of the Lucknow District; (3) that, although the interest of the Deputy Commissioner under the Will was not a beneficial interest but merely that of a trustee, the administration of the whole or of any portion of the property could, notwithstanding s. 21 of the Probate and Administration Act, under s. 41 of the same Act, be granted to the Deputy Commissioner, in view of the safety of the estate and of the probability that it will be properly administered; (4) that a testator's declarations, alleged to have been made by him at various times prior to his death, that he had revoked and destroyed his Will, are not legally admissible in evidence to prove the actual fact of the destruction of the will, (5) that, although the general presumption of law is that if a will is traced to the testator's possession and is not forthcoming at the time of his death, it has been destroyed by him, this presumption does not arise, unless there is evidence to satisfy the Court that it was not in existence at his death. In all such cases, the question to be determined before the raising of the presumption is, whether the Will was or was not in existence at the time of the testator's death, and where it is found on evidence that, after the testator's death, no *bona fide* search for the Will was made by an independent person, and the depositories of the deceased were shortly prior to and after his death accessible to the only person who was interested in destroying the Will, no such presumption arose. DEPUTY COMMISSIONER, LUCKNOW v. TEJ KISHEN, **8 Ind. Cas. 695.** (24 W.R. 60, 15 W.R. 797, 3 W.R. 106, 31 C. 885, 29 A. 82, 3 A.L.J. 747, A.W.N. 1906, 295, *R.*)

(129)—*Life interest or* corpus, *gift of—Discretion of executors to hand over* corpus—*Costs.*—A, a Portuguese inhabitant of Bombay, died on the 19th April, 1884, leaving three sons (M, S, and the third defendant J.) and two daughters, R and C. By her Will she directed that her daughter R should enjoy the rents and profits of certain immoveable property for her life, and that after her death the said property should be sold, and the sale proceeds (after payment of two legacies thereout) be divided between her two sons J and S in equal proportions. She further directed that the amount which might fall to the share of her son J should be held in trust by her executors and converted by them into Government securities, the interest accruing wherefrom should be paid for the maintenance of her son J, and that, in case J should die leaving a widow or issue, his share should be given to such widow or issue according as he might devise and bequeath. The Will then continued:—"Should my said son J reform himself and shake off all his evil tendencies, and lead a steady, quiet and orderly life, or should he, on account of illness or other reasonable cause, be in urgent need of pecuniary

Will—continued.

—3.—**Construction**—*continued.*

assistance, I leave it to the discretion of my executors either to make over to my said son J for his absolute use the whole of the amount which he may be entitled to under (*c*) of paragraph sixth above, or such part or parts thereof as to my executors may appear proper." S died in 1885, unmarried and intestate, leaving his two brothers, M and J, and his two sisters, R and C, him surviving. M died in 1889, leaving a widow and children. In 1891, the third defendant J executed a mortgage for Rs. 6,100, mortgaging all his interest under the said Will to the plaintiffs. In 1893, R died, and in 1894, C died. Subsequently, the executors were proceeding to sell the property mentioned in the Will when the plaintiffs filed this suit praying for a declaration that they had a valid charge upon J's interest therein, and that his interest should be ascertained and declared, and he himself ordered to pay the amount of their claim; that the property should be sold and their claim paid out of the funds; that the executors should be restrained from selling, save subject to their (plaintiffs), rights, etc. The plaintiffs and J contended that he (J) in the events that had happened was entitled to the whole of the proceeds of the property absolutely and that the gift in the sixth clause of the Will could not be cut down by the provisions of the seventh clause. *Held*:—(1) That the defendant J had no interest in the house mentioned in the Will. He was only entitled to a share of the proceeds after it had been sold. (2) That he was entitled to a life interest in the said share, with power to appoint to his widow or issue, and that he was not entitled to be paid the *corpus* of such share; but that the executors might, under certain circumstances and at their discretion, hand over to him the said *corpus*. (3) That neither the plaintiffs nor J could interfere in the sale of the said property. (4) That the plaintiffs had a valid charge upon the interest of J, the third defendant, in the sale-proceeds of the properties in question to the extent of their mortgage. (5) That J's interest was (after deducting the legacies given by the sixth clause) an absolute interest in one-fourth share of Silveira's moiety to which he was absolutely entitled and a life interest in Joaquim's moiety of the sale-proceeds, subject to the contingency of the executors, in the exercise of their discretion under certain circumstances, handing over to J the *corpus*, or part thereof, of the said share for his absolute use, in which event the plaintiffs would have the right to the same to such extent as their debt was unsatisfied. (6) As to costs, the plaintiffs and third defendant J should pay their own costs; that the executors and defendants Nos. 4 to 12 should have their costs paid out of J's interest in S's moiety of the sale proceeds, and, if that fund were not sufficient to pay such costs, the plaintiffs and the third defendant J to pay the deficiency. BECHAR AKHA v. P. DECRUZ, **19 B. 221.** [*Confirmed on appeal*, 19 B. 770.]

Will—continued.

——3.—**Construction**—*concluded.*

(130)—*Absolute gift—Life interest—Gift over to widow or issue of donee.*—A Portuguese resident of Bombay, died in April, 1884, leaving three sons, M. S. and J. (defendant No. 3) and two daughters, R and C. By her will she directed that her daughter R should enjoy the rents and profits of certain immoveable property for her life, and that, after her death, the said property should be sold, and the sale proceeds (after payment of two legacies thereout) be divided equally between her two sons S and J (defendant No. 3). The seventh clause of the will was to the following effect :—That the amount which may fall to the share of J under cl. (*c*) of paragraph 6 of the will should be held in trust by the executors of the will and converted by them into Government securities ; the interest accruing therefrom should be paid for the maintenance of J. Should he die leaving a widow or issue, his share shall be given to such widow or issue according as he may devise and bequeath. Should he reform himself and shake off all his evil tendencies and lead a steady, quiet and orderly life, or should he, on account of illness or other reasonable cause, be in urgent need of pecuniary assistance, executors were in their discretion either to make over to J for his absolute use the whole of the amount which he may be entitled to under cl. (*c*) of paragraph 6 above, or such part or parts thereof, as the executors may think proper. *Held*, on appeal, confirming the decree of the lower Court, that under the above clause of the Will, there was a clear gift over to the widow or issue of J, but that J was to have the power of designating how they were to take. To that extent, the absolute gift to J was qualified. Should the gift over fail, the absolute gift to J would remain unimpaired. BECHAR AKHA v. P. DECRUZ, **19 B. 770.** [*R.*, 5 C.W.N. 223, 61 P.L.R. 1902.]

(131)—*Will—Construction of document—Act X of 1865 (Indian Succession Act, s. 84—Devise to "eldest son and to his lawful male children according to the law of inheritance" —Marriage between Christian and Mahomedan performed according to Mahomedan rites.*—Thomas Skinner, domiciled in the North-Western Provinces, and the owner of considerable landed property, died in 1865, leaving a Will, dated the 22nd October 1864, *i.e.*, before the passing of the Indian Succession Act, by which, amongst other dispositions, it was provided that —"my private zemindari, presented to me by Government as a reward of services rendered during the rebellion of 1867, as well as all villages, houses and other property added by me from time to time to the original grant, may at my demise descend to my eldest son, Thomas Brown Skinner, and to his lawful male children, according to the law of inheritance. In the event of my eldest son, Thomas Brown Skinner, dying without lawful male children, the above mentioned private zemindari, *et cetera*, shall descend to my next male heir, and, should all my sons die without lawful male children, the zemindari, *et cetera*, shall descend to my female children, or in the event of their death, to the female children born in wedlock of my sons in succession." *Held*, that the construction of such a Will was not governed by English Law or by the Indian Succession Act, 1865, which was not retrospective ; but the Will was to be construed as was laid down by the Privy Council in the case of 13 M.I.A. 277, according to principles of justice, equity, and good conscience. So construing the Will, and having regard to the circumstances of the family at the time of its execution, the testator must not be taken to have intended to confer an absolute estate on his eldest son, but, that his sons who should acquire the property should have a life estate only, and that the absolute estate should devolve upon the eldest son of testator who should be entitled to the property for life and should leave a son surviving him. (1 B.L.R. 87, 9 M.I.A. 199, 12 B.L.R. 74, *R.*) *Semble*, that a marriage ceremony, performed according to Mahomedan rites, between a Christian man and a Mahomedan woman, can create no valid marriage between the parties. THOMAS WILLIAM SKINNER v. DURGA PRASAD, **31 A. 239 = A.W.N. 1904, 213 = 3 Ind. Cas. 66.**

(132)—*Will executed by Parsi — Power of management of the estate bequeathed to widow and daughter—Subsequent gift to two persons—Interest taken by legatees—Construction of Will.*—A Will executed by a Parsi in 1843 contained the following provisions :—"So long as my wife enjoys her natural life, the aforesaid two persons (the wife and the daughter of the testator) are to agree together and to manage "the affairs with unanimity, but after the death of my wife, I give the whole power over my estate to my daughter, and she is to manage all the affairs : and so long as she enjoys her natural life every thing is to remain under her. After the death of my daughter, her two sons are the owners of whatever property and estate there may be belonging to me. They are considered as my children. No one is to offer them any hindrance or impediment. I have presented all to my wife and my daughter." On a construction of the Will, the Court held that the wife and daughter had only an interest for life in the estate of the testator and that the two sons of the testator's daughter took a vested interest as joint tenants in the estate subject to the life-estates of the widow and daughter. NAVROJI MANOCKJI WADIA v. BEROY BAI, **23 B. 82.** [*Relied on*, 1 S.L.R. 211 ; *Appl.*, 34 M. 80 = 7 M.L.T 379 = 6 Ind. Cas. 7 = 20 M.L.J. 377 = 1 M.W.N. 74 ; *R.*, 26 B. 445, 31 B. 25 = 8 Bom. L.R. 770.]

(133)—*Armenian will—Construction—Devise—Absolute estate—Estate for life—Rule of interpretation.*—In regard to a Will which was not to be construed, according to English law, but according to equity and good conscience, the

Will—continued.

—3.—**Construction**—*continued.*

rule of interpretation was held to be that unless a contrary intention appeared, the estate given should be considered an absolute one. The words "on his (devisee's) demise, his sons shall get" were held only to describe what the testator thought would really follow from what he had done, and not as affecting the absolute character of the gift. BROUGHTON v. POGOSE, **12 B.L.R. 74=19 W.R. 181** [*R.*, 6 O.C. 305, 31 A. 239=A.W.N. 1904, 213.]

(134)—*Gift to daughters and share of each to her sons after her death, and to surviving daughter on dying without issue—On death of one daughter, leaving sons, does the other take by survivorship—Gift to class some of whom born after testator's death—Persons born in testator's life-time it alone take—Hindu Wills Act* (XXI *of* 1870), *s.* 3—*Indian Succession Act* (X *of* 1865), *ss.* 98, 100, 102—*Liberty to apply—Suit when unnecessary.*—A testator by his will directed his executors in certain events (which happened) to make over and divide the whole of his estate "unto and between my daughters in equal shares to whom and their respective sons I give, devise and bequeath the same, but should either of my said daughters die without leaving any male issue surviving, but leaving my other daughter her surviving, then in such case the surviving daughter and her sons shall be entitled to the share of the deceased daughter, or in the case of the death of either daughter leaving sons, the share of such daughter is to be paid to such her son or son's share and share alike" At the time the bequest to the daughters fell in, there were living two daughters of the testator, R. and P., and several sons of P., of whom three were born in the testator's lifetime and the others subsequently. The High Court *held*, on the construction of the Will, that the daughters each took an absolute interest in a half share of the estate, but left open as premature the question whether the gift to the daughter was defeasible in the event of either daughter dying without male issue and gave the parties, amongst whom were the sons of P., liberty to apply. The Privy Council on appeal modified the decree of the High Court, holding that the daughters were entitled to the estate of the testator in equal shares for life and with benefit of survivorship between themselves. Subsequently, on the death of P., one of her sons who was born in the testator's lifetime applied under the liberty reserved in the decree. *Held*—That the application was properly made and it was not necessary to institute a separate suit for the purpose. That the Privy Council, in making their order as above, could not have had in contemplation the event which has now happened, *viz.*, the death of P. leaving sons, and they were merely indicating the utmost interest that they did and could take in the events which up to that time had happened as between themselves, and apart from any subsequent disturbing event. That the three sons of P., who were born in the testator's life-time would, according to the true construction of the will, take the half of the estate in which P. had got a life-interest under the decree of the Privy Council. That the sons of P. who were born subsequently did not take by reason of s. 3 of the Hindu Wills Act (as interpreted in 8 C. 637) modifying the operation of s. 98 of the Succession Act incorporated therein. S. 3 of the Hindu Wills Act, according to that decision, controls not merely the nature of the interest sought to be created by a will, but also the capacity of the person in whose favour the interest is expressed to be created. Rule of construction of statutes incorporating the provisions of a previous enactment as laid down in 31 Ch. D. 607 (1886) referred to. That the gift to P's sons did not fail by reason merely of the incapacity of some of them to take under the will, as the class of persons tended to be benefited thereby could be ascertained within the period permitted by law, whereas in 2 Merivale 363 (1817) the gift to the class failed, because the class could not be ascertained within the period allowed by the rule of perpetuities. RADHA PRASAD MULLICK v. RANIMONI DOSI, **15 C.W.N. 113=8 Ind. Cas. 1061=38 C. 188=13 C.L.J. 183.**

(135) — *Attachment of legatee's interest, validity of—Parties—Administrator-General—Succession Act, ss.* 91, 106 *and* 107.—In execution of a decree obtained against D, certain properties were attached on the supposition that D was solely entitled to them. At the date of the attachment, these and other properties were in the hands of the Administrator General who had obtained probate of the will of the deceased father of D, and D had only a partial interest in the properties attached. The Administrator-General had not been made a party to the execution proceedings. *Held* that the attachment was nevertheless legal and could form the basis of a sale. The attachment of a judgment-debtor's property is not illegal because property which did not in fact belong to the judgment debtor had also been included in the attachment. The Administrator-General is a necessary party to the execution petition, but the omission to make him a party is not a ground for holding the attachment invalid. (23 M. 428, *D.*) A bequest, unless the testator intended otherwise as in the case of a contingent bequest, becomes vested in interest in the devisee or legatee from the date of the testator's death, although he may not be entitled to receive what has been bequeathed to him except in due course of administration, such an interest is attachable and saleable before an administrator has distributed the estate in due course of administration. ADUSUPATTI VENKATA ROW v. SAMI PILLAI, **1 M.W.N. 1912, 56.** (23 M. 216, *Expl.*)

(136)—*Devise of property for payment of testator's debts—Decree awarding possession to devisees—Liability of devisees under, to answer demand of creditors—Civil Court not competent*

Will—continued.

——3.—**Construction**—*continued.*

to maintain attachment without suit.— The testator in this case had made a devise of his property to go among his several heirs and kinsfolk, and, in the meantime, to be kept under management with a view to the gradual payment of his debts. The several parties entitled to take the estate were enabled by decree of Court to take possession of them, and the parties becoming so entitled to take their several shares were held to be liable to answer any suit of the creditors, according to their liabilities respectively, to pay the debts still owing from the estates of the testator. In the absence of such a suit, however, it is not competent to a Civil Court to maintain attachment on the payment of such debts. When any party brought his suit against the heirs of the deceased testator, it would then be time for the High Court to act as circumstances require and the law may allow. PETUM KOLREE v. JOY KISHEN DOSS BABOO, **8 W.R. 276.**

(137) — *Will — Interpretation — Condition subsequent— Grant of probate—Effect of grant —Subsequent suit by adopted son for declaration and injunction*—Res judicata—*Frame of suit—Probate and Administration Act* (V *of* 1881), *ss.* 50, 59.—One Motilal Ghatak, a Bengali, governed by the *Dayabhaga*, by his will, appointed one Rajendra Chandra Mitra as the trustee and executor thereof and then provided: "I further direct that my said executor or executors will select a boy from amongst my caste, and that such boy shall be adopted by my senior wife, if living. If she shall be dead at the time, then my junior wife shall adopt such boy. But I direct that Maniklal Ghatak, son of Chuni Lal Ghatak, will have preference if his parents agree to give him in adoption, and I further direct that, if the boy so adopted to me as aforesaid be honest and faithful to my said wives and prosecute his studies up to the M. A. Standard of any Indian University, then my executor or executors shall hand over my properties to my such adopted son on his attaining majority, and such adopted son shall carry out the direction as herein before contained. The senior widow of the testator adopted Maniklal Ghatak on 15th February, 1909, and the latter attained majority on 19th April 1909. After coming of age he, on 12th August, 1909, applied to the Allahabad High Court for probate of the will, and Rajendra Chandra Mitra entered a caveat on 25th November, 1909. In September, 1909, Rajendra Chandra Mitra applied to the Calcutta High Court for probate of said will and caveat was entered on behalf of Maniklal Ghatak. That Court granted probate to Rajendra Chandra Mitra on 20th December, 1907, and the probate issued on 17th March, 1919. In July, 1909, Rajendra mortgaged certain houses which were situated in Calcutta and covered by the will. Manick remained in possession of the properties bequathed all along. On 23rd December, 1909, he brought a suit in the Court of Subordinate Judge of Allahabad for declaration of his title and for an injunction restraining Rajendra from intermeddling with the estate. *Held*, (1) that the executor was bound to hand over the properties covered by the will to the plaintiff, who was lawfully adopted by the senior widow of the testator, on his attaining majority; (2) the conditions that the plaintiff was to be "honest and faithful" to the widows of the testator and was "to prosecute studies up to the M. A. Standard of any Indian University" were only conditions subsequent, and the vesting of the property in the plaintiff did not depend on those acts on the part of the plaintiff; (3) that the adoption was not invalid by reason of the selection not having been made by the executor, inasmuch as the clause in the will naming the plaintiff as the preferential person to be adopted completely took away the power of selection given to the defendant in the adoption of the plaintiff; (4) that the frame of the suit was right inasmuch as the mortgage of the houses and the entering of caveat by the defendant afforded a good cause of action to the plaintiff; and (5) that the decree of a competent Civil Court superseded the grant of probate, the only result of a probate being that it was conclusive, when granted, as to the representative title of the grantee in certain respects, and the construction of a will or the determination of the rights of certain persons under the will were outside the scope of a probate. No proceedings for revocation under s. 50, Probate and Administration Act, need be taken. RAJENDRA CHANDRA MITRA v. MANICK LAL GHATAK, **8 A.L.J. 1063.**

(138)—*Application for probate—Earlier wills not revoked by last—Finding by Probate Court* —Res judicata.—Where, in an application for probate, the plaintiff in the present case contended that the last of the three wills revoked the earlier two, and the Probate Court found that the last will did not revoke the earlier ones but refrained from deciding whether, on the reading of the three wills together, it would have to be held that any of the dispositions in the earlier wills was superseded by the last will: *Held*, that the plaintiff would be precluded from contending that the last will revoked the earlier ones except by superseding any one or more of the dispositions contained therein, by the terms of the last will. MARYAMMAL v. KALIAMMAL, **9 M.L.T. 319=21 M. L.J. 485=9 Ind. Cas. 613.**

(139)—*Right of suit by stranger—Construction of will.*—Where, according to a possible and probable construction, the will has given the inheritance to the plaintiff, a stranger is not entitled to come in and say that, under another construction, not set up by the person who would benefit thereby, that person and not the plaintiff is the rightful owner. DROBOMOYEE CHOWDHRAIN v. SHAMA CHURN CHOWDHRY, **12 C. 246.**

Will—continued.

——**3.—Construction**—*continued.*

(140)—*Letter written long time after — Admissibility in evidence—Resulting trust—Act* II *of* (*Trust*) 1882, *s.* 81—'*Intention*'—*Meaning.*—Where a testator bequeathed, by his last will and testament, all his property to one G and also added in the will a clause on the following terms—'I have no doubt he (*i.e.*, G) will carry out my wishes,' and where he also left a letter written three years after the will in which he gave directions to G to give his property to his next-of-kin. *Held*, that, even if the letter were admitted in evidence, it did not help to establish a resulting trust in favour of the next-of-kin, because one could not say on the strength of the letter that the testator did not intend at the time he made his will that the beneficial interest should not go to G. The intention referred to in s. 81, Trusts Act, 1882, is the intention of the testator at the time of making his will. RICHARD TAYLOR v. SRI KRISHNA CHANDRA GAYAPATHI NARAYANADOE MAHARAJULU GARU, **10 M L.T. 42.**

(141)—*Construction of—Right to sue by the brother of the testator who was prohibited by the will from interfering with the latter's affairs—Trial of issue on private matters not relevant to the suit.*—A testator bequeathed all his property, in the absence of a son, to his widow for life and, after her to his daughter's son, if any. Failing these, the widow was to take the estate absolutely, subject only to a condition that she should not alienate it to any member of her father's family. The will expressly prohibited the interference of the testator's brother in his affairs. After the death of the testator leaving an only daughter, the widow gave out that she had given birth to a posthumous child. The brother of the testator thereupon sued for declaration that the posthumous child was not the son of the testator. *Held*, that the plaintiff had no status to maintain the suit, as he was neither an immediate nor a remote reversioner. The procedure adopted by the lower Courts, of inquiring into the private affairs of the defendant's family, in considering an issue regarding the alleged legitimacy of the posthumous child, which was not wholly relevant to the suit, was severely criticised. RALLIA v. GOKAL CHAND, **139 P.R. 1907.**

Will by Parsi, failure of devise under—Negative words in will, whether can exclude heirs at law—*See* ACT XXI OF 1865, 4 B. 537.

Testamentary intention expressed by Talukdar in a letter of reply to Government, whether constitutes will—*See* U. P. ACT I OF 1869, ss. 2, 20, 22, 18 C. 1=17 I.A. 82, P.C.

Construction of—by a *Khoja* Mahomedan—Gift to a class—*See* ADMINISTRATION, 29 B. 133.

Words used in lease and deed or will—Different effect—*See* GRANT—CONSTRUCTION, 30 C. 20=7 C.W.N. 314.

Will—continued.

——**3.—Construction**—*concluded.*

Condition in, that adopted son should take after widow if of good character—Contingent interest—Whether void for uncertainty—Whether person adopting bound not to make a will —*See* HINDU LAW—ADOPTION, 12 C.W.N. 668.

See HINDU LAW—ADOPTION, 5 C.W.N. 162.

Defeasance—*See* HINDU LAW—ADOPTION, 1 C.L.J. 270=32 C. 861.

Document giving the wife authority to adopt and authorising her to put the adopted son into possession of all the immoveable properties of the person—No devise—Act V of 1881, s. 3—*See* HINDU LAW—ADOPTION, 27 M. 30.

Authority to adopt given by will to wife and executors — Validity — *See* HINDU LAW—ADOPTION, 24 C. 589=1 C.W.N. 345.

Construction of term "malik" used in will to be made with reference to its context and other circumstances—*See* HINDU LAW—INHERITANCE, 8 C.L.J. 369.

Words conferring absolute estate by subsequent terms held to confer only life-estate—Effect of devise when devisees not in existence at testator's death—*See* HINDU LAW—JOINT FAMILY, 28 M. 386.

See HINDU LAW—MAINTENANCE, 3 B. 415, P.C.=6 I.A. 114=6 C.L.R. 162.

Decisions in two suits by executors—Suits independent of each other though depending on construction of same will—Reversal of decree in one suit on appeal, whether sufficient cause for grant of leave to appeal in the other suit—*See* LIMITATION ACT, 1908, ss. 4 and 5, 14 B. 365.

Construction of—Creation of beneficial interest—Admissibility of unattested letter to establish a trust in favour of testator's next of kin—Legatee holding benami for testators next of kin—English law—*See* TRUSTS ACT, 1882, ss. 5, 81, 2 Ind. Cas. 4=32 M. 443.

——**4.—Execution.**

See SUCCESSION ACT, 1865, s. 50.

(1)—*Burden of proof as to mental competence of testator.*—The persons propounding a will must prove the mental competence of the person, who, they allege, executed the will, if the competence of that person is disputed. THAKUR PURANDAR SINGH v. MT. TULSA BAI, **9 C. P.L.R. 139.** (21 C. 279, *F.*)

(2)—*Nun-cupative Will, title set up under, strong evidence necessary to prove.*—The party who sets up a nun-cupative Will and rests his title on it, because he relies on so uncertain a foundation as the spoken words of a man since deceased, is bound to allege, as well as to prove very satisfactorily, and with the utmost precision, the execution of the Will by proving the

Will—continued.

——4.—Execution—*continued.*

exact words relied on by him with every surrounding circumstance as to place and time. MUSSAMUT CHUNNI v. JAGANNATH, **15 P.R. 1890.**

(3)—*Signature, Proof of—Handwriting expert, opinion of, without examination in Court, if admissible—Will, proof of.*—The propounder of a will should prove, to the satisfaction of the Court, beyond all possible doubt, that the will was executed by the alleged testator and that it was executed in accordance with the law, and that the testator at the time of execution was in a fit state of mind and body to execute the will and so fully appreciated what he was doing as to the disposition of the property. The opinion of a handwriting expert on a signature, when he was not called as a witness and not subjected to cross-examination, was inadmissible in evidence. MT. PADAMA PRIYA DEBYA v. DHARMA DAS DEB SARMA, **16 C. W.N. 728.**

(4)—*Wills—Genuineness—Onus of proof—Evidence as to matters that transpired from its inception up to drafting—Value.* The *onus* of proving the genuineness of a will rests upon the party relying upon the will. Evidence on such matters as to when the terms of the will were first thought of, when the writing of the will was also first thought of, and what happened between the first inception of the idea and the drafting of the will, is of great importance in enabling the Court to arrive at a conclusion as regards the genuineness of a document put forward as a will. KANAPAREDDY VENKAMA v. KANASAREDDI RAMAYYA, **9 M.L.T. 338.**

(5)—*Will—Evidence—Testamentary capacity—Illness and intemperance of the testator—Undue influence—Persons propounding the will benefiting by it.*—The *onus* of proving the testamentary capacity of a testator lies on those by whom the will is propounded, and the evidence held to discharge that obligation is not displaced by the mere proof of serious illness and general intemperance of the testator. Evidence of circumstances of the character that there was motive and opportunity for the exercise of undue influence by the persons propounding a will, and that some of them in fact benefited by the will to the exclusion of other relatives of equal or nearer degree, may suggest suspicion and would certainly lead the Court to scrutinise with special care the evidence of those who propound the will, but is not by itself sufficient to set the will aside on the ground of undue influence. In order to set aside a will on the ground of undue influence, there must be clear evidence that such influence was in fact exercised, or that the illness of the testator so affected his mental faculties as to make them unequal to the task of disposing of his property. BUR SINGH v. UTTAM SINGH, **8 A.L.J. 123, P.C. =13 Bom.L.R. 59=21 P.L.R. 1911=9 M.L.T. 115=15 C.W.N. 177=21 M.L.J. 100=1 P.W.R. 1911=9 Ind. Cas. 33=21 P.R. 1911=13 C.L.J. 72.**

Will—continued.

——4.—Execution—*continued.*

(6)—*Will, Execution of—Evidence—Probabilities.*—To outweigh the strong and satisfactory evidence on which the affirmative of due execution of a will rests, it is necessary that the improbability must be cogent and clear. It must approach very nearly to, if it does not altogether constitute, an impossibility. CHOTEY NARAIN SINGH v. RATAN KOER, **22 C. 519, P.C.=22 I.A. 12=6 Sar. 564.** [*R.*, 27 B. 626.]

(7)—*Mental faculties affected by physical weakness—Testamentary capacity—Insane delusion affecting question of testamentary capacity—Questions relating to testamentary capacity—Speculative theory derived from medical books and judicial* dicta, *not a safe basis.*—Although the mental faculties of a person suffering from partial paralysis may have been affected by his physical weakness, he may still be capable of devising and of executing a will of a simple character, although unfit to originate or to comprehend all the details of a complicated settlement. In order to constitute an insane delusion affecting question of testamentary capacity, it must be shown, not only that belief in it was unfounded but that it was so destitute of foundation that no one except an insane person, would have entertained it. In questions relating to the testamentary capacity of a person, it is always dangerous to base the judgment on the speculative theory derived from medical books, and judicial *dicta*, instead of depending upon the facts established by the evidence in the case. SAJID ALI v. IBAD ALI, **23 C. 1, P.C.=22 I.A. 177=6 Sar. 626.** [*Appl.*, 25 C. 340; *R.*, 134 P.R. 1908.]

(8)—*Evidence conflicting—Appellate Court's duty—"Due execution"—Mental capacity of testator in dispute—Execution of will, proof of—Presumption—Rules for deciding such cases.*—In all cases in which the evidence is conflicting, it is the duty of a Court of Appeal to have great regard to the opinion formed by the Judge in whose presence the witnesses gave their evidence, as to the degree of credit to be given to it; and, probably, the advantage of hearing the witnesses give their evidence is of special value, where there is conflict between them as to the mental capacity of a person, whose conduct they have observed and whose state of mind they depose to: for the original Court, has not merely the better opportunity of judging of the truthfulness of the evidence, from the manner in which it is given, but also of judging how far the witnesses possess those qualities on which depend much of the value of evidence given in good faith, power of observation, of judgment, accuracy of expression, general intelligence, which are of special importance in case wherein the execution of the

Will—continued.

——4.—**Execution**—*continued.*

will is questioned on the ground that the mental capacity of the testator when the will was made by him, was such that it was doubtful whether the will could have been duly executed. The term "duly executed" does not mean merely the fact of execution by the testator, but means proof of execution which carries with it a conviction that the testator knew, and approved of, the contents of the instrument. This, of course, involves, in the proposition that the testator knew and approved of the contents of the instrument, the proposition that he was a free and capable testator, since knowledge implies his possession of the capacity without which he could not know the contents of the will, and approval cannot be real and complete without a free exercise of the will. [*R.*, 31 C. 11.] In ordinary cases, execution of a will by a competent testator raises the presumption (sufficient if nothing appears to the contrary to establish), that he knew and approved the contents of the will. Also, under ordinary circumstances, the competency of a testator will be presumed, if nothing appears to rebut the ordinary presumption. As the result of these two presumptions in ordinary cases, at least in many cases, proof of execution of the will is enough. But, where the mental capacity of the testator is challenged by evidence, showing that it is very doubtful whether the state of mind of the testator was such that he could have duly executed the will as he is alleged to have done, the Court ought to find whether, upon the evidence, the testator was of sound disposing mind and did not know and approve of the contents of the will. The *onus probandi* lies in every case upon the party propounding a will; and he must satisfy the conscience of the Court that the instrument so propounded is the last will of a free and capable testator. The *onus* is, in general, discharged by proof of capacity and the fact of execution from which the knowledge of and assent to the contents of the instrument are assumed. WOOMESH CHUNDER BISWAS v. RASHMOHINI DASSI, **21 C. 279.** [*Affirmed*, 25 C. 824, P.C.; *F.*, 9 C.P.L R. 139.]

(9)—*Will of illiterate person—Proof of knowledge of contents of will purporting to bear the mark of illiterate testator.*—Those who propounded the will of a person who can neither read nor write must prove affirmatively that the testator knew and approved of the contents of the will. In the case of an illiterate person something more is required than proof that the executant made his mark on the document. Knowledge of the contents of the document cannot be inferred from the fact that he marked the document. RAM PRASAD v. JOKHU, **11 O.C. 20.** (1 C.L.J. 109, *R*.)

(10)—*Validity of will—Testator's death shortly after will not sufficient ground for invalidating—Nature of proof required for valid disposition.*—In determining whether the testator was in such a mental condition as to be capable of making a valid disposition of his property by a testamentary instrument, the circumstance that he was on the verge of death is no doubt a circumstance to be considered, but the mere fact that the testator died shortly after making his will is not of itself a sufficient ground for invalidating a will otherwise valid. According to the judgment in the case in 10 W. R. P. C. 3, proof that the testator knew what he was about and intended to make the disposition of property contained in the will is quite essential. MUSST. JISI BAI v. POKHUR MAL. **51 P.R. 1882.**

(11)—*Muhammadan Law—Intention to bequeath essential to establish Will—Oral Will—Proof of d finite intention.*—The question in this case was whether, on the evidence, a deceased Muhammadan had made a valid oral bequest of his property to his daughter's son, that is, whether the fact found, that on various occasions, he said that the legatee was his son and was *malik* and *waris* of his property both during his life and after his death, was sufficient to constitute a nuncupative Will by Muhammadan Law. The above point was one of fact, as to the intention of the deceased in using the words he uttered. On none of the occasions on which the expressions were used, was it understood that the deceased was, by using the words making a disposition of his property by way of bequest. Also, the repetition, on several occasions, of the expressions ascribe to the deceased militated against the view that he did intend to make a bequest. If the same words had been written in a formal document, they would certainly amount to a bequest, because, in that case, there would have been proof of a definite act intended to operate as a bequest. Under the Muhammadan Law, an oral Will is as valid as a written Will, but, in both cases, there must be an intention to bequeath. No such intention was found in the present case and it was therefore held that there was no bequest made in favour of the nephew which could be considered a Will by the deceased under the Muhammadan Law. MUSST. NATHO BEGUM v. RAHIM SHAH, **55 P.R 1891.**

(12)—*Finding on issue not material in former suit—Evidentiary value of.*—The finding in a former suit that a Will was executed, was not conclusive evidence in a subsequent suit, when the issue regarding the Will was not really a material one in the former suit. BEER CHUNDER ROY v. SHAIKH TUMEEZOODDEEN, **12 W R. 87.**

(13)—*Claim under Will Will not genuine—Issues.*—Where a plaintiff claims under a Will, which is found to be not *bona fide*, the case must be decided on that issue only and not on other issues which affect the right of succession of the wife and sons of the testator. THE REV. FRANCISCO DE ASSIS. VICAR-GENERAL AND SUPERIOR OF THE PORTUGUESE MISSION IN BENGAL v. LOUI SA DOS ANGOS, **17 W.R 188.**

Will—continued.

——4.—Execution—*continued.*

(14)—*Due execution of.*—Where a will purporting to be signed by the testator and seven witnesses, of whom four were stated to be respectable, was produced within three days after the testator's death, and there were several circumstances corroborating the evidence given by the four witnesses, and where the weight to be given to the other evidence in the case was not shaken by the topics put forth on appeal: *Held*, that there was due execution of the will, though the plaintiff and the other three witnesses were not examined, and though the evidence referred to was liable to suspicion and to the comments made on it in the Court below. MUSSAMAT CHANDA DEI v. MADHO SARA, **14 Bur. L.R. 2, P.C**

(15)—*Execution under pressure—Free agency—Importunity—Indian Succession Act* (X *of* 1865), s. 48—*Illus.* (*g*) *and* (*h*)—A will is not invalidated on the ground of its having been executed under pressure, unless the pressure was such as the testator could not resist. Illus. (*g*) and (*h*) of s. 48 of the Succession Act practically lay down the rule, which should guide all Courts on the question of importunity. They indicate the law as stated in "Williams on Executors and Administrators." JAJNESHWARI SAHA v. UGRESHWARI DASSYA, **11 C.W.N. 824.**

(16)—*Will—Execution—Testamentary capacity—Will drafted according to instructions and signed by testator without at the time understanding all its provisions—Semble*: Where it was proved that a will was prepared according to the testator's instructions by the person entrusted with its preparation, who moreover was fully conversant with the testator's affairs and was apparently on intimate terms with him so that the testator would have ample reason for believing that the will placed before him for signature was drawn up in accordance with his instructions, it should be considered his will if he set his hand to it, and it would not be necessary to prove that at the time he was capable of understanding all its provisions. *Held*, on the facts of the case that the testator was not merely supposing that he was executing a will, but possessed at the time sufficient intelligence to be able to understand the provisions of the will which were of the simplest character, though he might not possibly have been able to follow every sentence of the will. SM. KUSUM KUMARI DASSIv.SATISCHENDRA NATH BOSE, **13 C W.N. 1128=3 Ind. Cas. 787.**

(17)—*Will, genuineness of—Evidence relating to execution—Evidence as to execution of will—Duty of Judge.*—On a review of the whole case, *held*, that the appellant had established the genuineness of the will in question. It is the duty of a Judge, in cases where the genuineness of a will is in question and the evidence is very conflicting, in some respects obscure and unsatisfactory, patiently to investigate the actual facts, placing himself, as it were, in the position of the alleged testator with all his actual

Will—continued.

——4.—Execution—*continued.*

surroundings; not to approach the subject from the point of view of what a testator ought or would be likely to have done on some preconceived idea of Hindu usages and habits of thought. DOWLAT KOER v. RAMPHUL DAS, **25 C. 459, P.C.=25 I.A. 21=2 C W.N. 177=7 Sar. 231.**

(18)—*Petition for mutation of names—Interpretation of documents—Heirship—Succession.*—A petition to the Collector by the proprietor of certain estates, for the registration of his son's widow's name in the mutation register, declaring her and her daughters and their children heirs and *maliks* with a provision that the management of the property should be kept in the petitioner's hands as long as he lived, was held to be a testamentary instrument disposing of the property to which it related. *Held*, further, that the daughters' children could not take under the Will, as not being in existence at the death of the testator and that the daughters took the property absolutely as joint owners, subject to a prior life-estate of the widow. SYED MAHOMED SHUMSOOL HODA v. SHEWUK RAM *alias* DOORGAH PERSHAD, **14 W R 315.** (4 B L.R. 103, *R.*; 13 W.R. 285. 5 B.L.R. 125, *Not F.*) [*Affirmed.*, **14** B.L.R. 226, P.C.]

(19)—*Indian Succession Act, s.* 48 (*g*)—*Will procured by wife's importunity—Undue influence.*—Where a wife persuades her husband to make a will in her favour, but the influence which she exerted on the testator was not such as to deprive him of the exercise of his judgment and volition, the wife's conduct does not amount to undue influence as defined in the Indian Succession Act. MORRISON v. THE ADMINISTRATOR-GENERAL OF MADRAS, **7 M. 515.**

(20)—*Hindus—Sikhs—Brahmos—Probate and Administration Act, s.* 2. *Act* V *of* 1881—*Will duly executed—Undue influence—Validity of trusts created by will—Security—Costs.*—Sardar Dyal Singh Majithia died leaving a will whereby he bequeathed property in favor of his cousin Sardar Gajindra Singh and for the creation of certain public trusts, namely, opening of an Arts College and a Public Library at Lahore and maintaining the Tribune Newspaper of which he was the proprietor. The will, also contained a provision for the maintenance of his widow and a legacy in favour of one Mrs. Catherine Gill. On the executor's application for probate under Act V of 1881 (Probate and Administration,) *caveats* were entered into by the cousin, the widow, Mrs. Catherine Gill and Sardar Attar Sing another male collateral of the deceased who subsequently withdrew his objection. Among others the contentions of the objectors were:—(1) The application did not lie under Act V of 1881, as the deceased was not a Hindu for (*a*) he was born a Sikh, the connotation of which term excludes the notion of his being a Hindu; (*b*) he abandoned Sikhism and adopted Brahmoism

Will—continued.

——4.—**Execution**—*continued.*

which also similarly is a religion outside the pale of Hinduism and opposed to it (*c*) he ate beef and food cooked by Muhammadans, Christians and others and in their company, contrary to the tenets of Hindu religion and the social usages of those who profess it, and thereby lost his caste; (ii) that the will was not duly executed, and that it was invalid on the grounds of undue influence, importunity and mental weakness; (iii) that the majority of the trusts were void under law; (iv) that the whole of the property bequeathed was ancestral property of the deceased and could not be disposed of by a will under Customary and Hindu Laws; (v) that considering the value of the estate, the provision for the maintenance of the widow was not suitable to her rank and position in life. The objectors also prayed that suitable security according to the value of the estate which was very large be taken from the executors. *Found* (*a*) that the Sardar was born a Sikh of the sect of the tenth guru and although he cut his hair and smoked, practices heterodox according to Sikhism, he never formally abandoned the Sikh religion; (*b*) that the deceased joined the Brahmo Samaj as a regular subscriber and remained a *non-anusthanic* Brahmo throughout his life. Anusthanic Brahmos are those who live strictly according to Brahmoic principles and who discard the idolatrous portion of the Hindu ritual on birth, marriage, death, &c.; (*c*) that it was proved that the deceased lived in the European style and ate at a table with Muhammadans, Christians, Parsees and others with whom Hindus and Sikhs are prohibited from eating by their social customs, and that he kept Muhammadan and Christian cooks, but it was not proved that he ate beef. *Held*, that the deceased was a Hindu within the meaning of s. 2 of the Probate and Administration Act (V of 1881). The Court remarked that Sikhs are at all events at the present time, regarded only as a sect of Hindus and, though the term Hindu in the Indian Succession and Probate and Administration Acts, must be understood in a theologica sense, it does not mean that the Court is to take upon itself to enquire what doctrines do or do not properly belong to Hinduism and thereupon to find whether a particular person was or was not a Hindu. Such an enquiry is obviously impossible for a British Indian Civil Court to institute and such a decision equally impracticable. The Court must, therefore, proceed upon what is generally understood to be the meaning of the expression. On the question whether Brahmos can be included within the term Hindu, the Court observed that Brahmoism is a faith of Indian origin, and, considering the extreme tolerance of Hinduism in matters of mere belief, we are disposed to think that mere profession of Brahmoism does not necessarily make a man cease to be a Hindu unless he also abjures the social rules of Hindus and declares himself not to be a Hindu, and before a man can be declared to have ceased to be a Hindu by adopting another faith, the fact of his conversion ought to be proved. The Court also remarked that, as far as this Province is concerned, the fact that Hindu has become a Brahmo does not ordinarily make any difference in his position among his brother Hindus and that he is treated as a Hindu as before. The deceased was a Sikh and he did not cease to be a Hindu by becoming a *non anusthanic* Brahmo. On the question whether the deceased by reason of his heterodox practices ceased to be a Hindu or Sikh before he died, the Court observed that he did not cease to be a Sikh as the followers of Guru Gobind Singh only are forbidden from smoking and cutting hair. These acts involve the social ban, but do not amount to renunciation of religion. As regards the Sirdar's eating food cooked by Muhammadans, Christians and low caste cooks and at the same table with people belonging to other religions, these were held to be branches of Hindu and Sikh social rules and of the Hindu and Sikh religious ordinances; they involved social excommunication and required religious expiations, for purification but the deceased could not be said to have ceased to be a Hindu or Sikh on this account. *Held*, also, that the will was duly executed, the deceased understood perfectly well what he was doing, he was in possession of all his mental faculties and a sound disposing mind when the will was executed, and his circumstances, interests, tastes, and disposition were such as would lead to the disposition of his property effected by the will; and that undue influence was not exercised on the deceased. The provision made for the Rani during his lifetime was continued or rather increased and what the Sardar appears to have considered his ancestral estate was bequeathed to his collateral heir, Sardar Gajindra Singh. *Held*, further, that the question of the validity of the dispositions should not be considered in these proceedings. The Court did not consider it necessary to demand security from the executors and ordered the objectors to pay their own costs. BABU JOGENDRO CHANDRA BOSE v. RANI BHAGWAN KOUR, **P.L.R. 1901, p. 231=63 P.R. 1900.**

(21)—*Will—Execution—Solicitor—Executor preparing and attesting will—Clause permitting him to charge for professional and other services—Proof—Onus—Independent advice—Fiduciary relation—Deed referred to in will—Probate—Succession Act* (X *of* 1865), *s.* 51.—If a party writes or prepares a will, under which he takes a benefit, that is a circumstance that ought generally to excite the suspicion of the Court and calls upon it to be vigilant and zealous in examining the evidence in support of the instrument, in favour of which it ought not to pronounce unless the suspicion is removed and it is judicially satisfied that the paper propounded does express the true will of the deceased. But there is no rule of law as to the particular kind or description of evidence by

Will—continued.

——4.—**Execution**—*continued.*

which the Court must be satisfied. The degree of suspicion excited and the weight of the burden of removing it must depend largely on the nature and amount of the benefit taken and all the circumstances of the case. The question is a pure question of fact and one to be decided on a consideration of the whole of the evidence and the circumstances of the case. A clause in the will in this case permitted the solicitor, who prepared and attested the will, and was also appointed one of the executors, to charge for professional services done by him or his firm. It also allowed him a further remuneration of one per cent. on the profits of the testator's business, for services in connection with the management of the business. The Judicial Committee was satisfied that there were circumstances, which showed that the testator understood and approved of the clause, although it appeared that the testator had no independent advice in this matter and no independent evidence was adduced that this clause in particular was called to the testator's attention. Where a deed-poll previously executed by the testator was referred to in the will but not for the purpose of making its contents a part of the will: *Held*, that it was not a testamentary document requiring probate, although the will, in terms, purported to confirm the deed. BAI GUNGABAI v. BHUGWANDAS VALJI, **9 C W.N 769, P C. = 7 Bom L R. 854 = 29 B. 530 = 15 M L J 271 = 3 A.L J. 68 = 32 I.A. 142 = 8 Sar. 813**

(22)—*Will Testamentary capacity not proved*—Onus.—Case wherein, on a consideration of the evidence, the history of the illness, and other suspicious circumstances, it was held that it was not shown that the testator had due testamentary capacity, nor was there any adequate proof whatever, that he knew or approved of the contents of the will. This was not like a case in which a testator executes a disposition of this property for which instructions have been given, or preparations made, while the mind was in vigour. The burden of proving that the testator had the testamentary capacity lay on the proponent. RASH MOHINI DASI v. UMESH CHUNDER BISWAS, **25 C. 824, P.C. = 25 I.A 109 = 2 C.W.N. 321 = 7 Sar. 298.** [*R.*, 11 C.W.N. 824.]

(23)—*Will—Execution of will for a particular year—Death of testator after expiration of said year—Validity of will.*—Where a testator executed a will for a particular year and died after the expiration of that year without expressing any intention that he kept the will as a subsisting instrument, the will had no effect and the deceased must be considered to have died intestate. GNANAMBAL v. AMMALU AMMAL, **5 M.L J. 94.**

(24)—*Will - Dispute—Procedure— Signature of testator*—In the case of a disputed will, the proceeding should take as nearly as possible the form of a regular suit according to the provision of the Civ. Pro, Code, in which the petitioner

Will—continued.

——4.—**Execution**—*continued.*

for probate shall be the plaintiff, and the person who may have appeared to oppose the grant shall be the defendant. Mere mechanical signature is not enough to entitle the executor to probate. The signature must be that of a conscious person, and not the result of mere movement of the hand. KALEE TARA DOSSIA v. NOBIN CHUNDER KUR, **21 W.R. 84.**

(25)—*Prior will—Execution of a later will two days after—Improbable circumstances—Genuineness.*—Where the suit Will was executed two days after the execution of a prior will, under circumstances making the execution of the suit Will highly improbable. *Held* that the suit Will was not genuine. KALAMANCHILI CHINNA BASAVAYYA v. EALEMANCHILI BAPAMMAD, **9 M.L.T. 354.**

(26)—*Will—Proof of execution—Knowledge of contents—Duty of Court.*—Where the person who propounded the Will chose to keep back the evidence which, if the fact was so, would have clearly established that the cross mark purporting to have been made by the testatrix was really made by her or at her desire and that at the time the nature and contents of that document were well known to her, the Court would not be justified in acting upon it (*Pearson* v. *Pearson*, L R 2 P. and D. 451, *Hastilow* v. *Stobie*, L.R. 1 P. and D. 64, *Morrith* v. *Douglas*, L.R. 3 P. and D 1, *R.*). HARI LAL HARJIWAN DAS v. PRANVALAVDAS PARBHUDAS, **16 B. 229.**

(27)—*Codicils—Testamentary capacity—Undue influence.*—Where the respondent, the widow of a Khoja Mahomedan of Bombay and Zanzibar, executrix under his will, claimed probate thereof and of five codicils, and his eldest son, an executor, opposed her as to the third, fourth and fifth codicils, contending that the third and fourth were obtained by undue influence on the part of the respondent, and as to the fifth, that, if signed by the testator, it was signed when he was unconscious, *held* that, in the absence of evidence to show coercion in the special matter of the third and fourth codicils, general evidence to show that about that time the testator had become infirm in health and almost blind, and that the respondent was a woman of superior ability and of great force of character, and had acquired increasing dominion over the testator's mind, and such general assertions of the wife's commanding character and the husband's weakness, and incidents such as wrangling about expenses and such other matters, go far little to establish such undue influence as to invalidate the codicils. But as to the fifth codicil, considering the circumstances under which it was executed, it could not be admitted to probate. SALA MAHOMED JAFFER BHOY v. DAME JANBAI, **1 C.W.N. 481, P C. = 22 B. 17 = 24 I A. 148 = 7 Sar. 173.**

(28)—*Beneficial interest with mother until majority of testator's wife — Personal decree*

Will—continued.

——**4.—Execution**—*concluded.*

against mother—Property of wife not saleable in execution of.—Under the terms of the Will, in this case, till S, the wife of the testator came of age, his mother D was to have the beneficial interest in the property, and the rent she recovered from the tenants was on her own account and not as guardian of her daughter-in-law S. A decree obtained against D in a suit brought by the ryots for setting aside a summary award of rent against them under Reg. VII of 1799, was, under the cricumstances, held to be not one obtained against her as guardian of the minor, but personally, so that the property of the testator's wife could not be sold in execution of such decree. GOOROO DOSS BABOO v. SOONDUR KOOMAREE DEBIA, **8 W R. 217.**

Witnesses not signing in presence of testator —Will invalid—Probate proceedings—Appeal —Court-fee—*See* COURT FEES ACT, 1870, sch. II, arts. 1, 11, 9 M.L.T. 314=21 M L.J. 481= 9 Ind. Cas. 538.

Right of absolute occupancy tenants to bequeath holding—*See* RIGHT OF OCCUPANCY —TRANSFER OF RIGHT, 15 C.P.L.R. 1.

——**5.—Form of Will.**

(1)—*Printed form of will, imperfectly filled in — Testator's omission to insert name and description at the head of document — Name written in the attestation clause— Application for grant of probate.*—Although a testator, who died leaving as his will a printed form of will which was only partially filled up, omitted to insert his name and description at the head of the document and to append his signature thereto; yet his signing his name in the attestation clause and his completing the disposition clause bequeathing all his property to his wife and appointing her sole executrix, showed a sufficient intention to execute the will; and so an order for grant of probate could be made. (*In the goods of Casmore*, L.R. 1 P. and D. 653, *R.*) *In the goods of* PORT HOUSE, **24 C. 784.**

(2)—*Probate and Administration Act* (V *of* 1881), *s.* 3—*Document intended to take effect partly during life of executant and partly after death.*—There is no objection to one part of an instrument operating *in præsenti* as a deed and another *in futuro* as a will (*Doed. Elizabeth Cross* v. *Arthur Cross.* (1846) 8 Q.B 714, S.C. 15 L J (N.S) Common Law, 217, *R.*) *Held*, that such portions of the document in question as the executant desired to take effect after her death amounted to a Will within the meaning of s. 3 of the Probate and Administration Act, 1881, notwithstanding that the same document may contain other provisions which she desired should be carried into effect during her lifetime. CHAND MAL v. LACHHMI NARAIN, **22 A. 162.**

(3)—*Indian Succession Act*, 1865—*Will of Buddhist.*—Probate may be granted of the

Will—continued.

——**5.—Form of Will**—*concluded.*

Will of a Buddhist should it be executed according to the formalities required by the Indian Succession Act, 1865. *In the matter of* KOKYA DINE, **2 B.L.R.A.C. 79=10 W.R. 417.** [*R.*, 17 B. 388.]

(4)—*Will—Memoranda in book—Probate—Codicil.*—Where the will of a domiciled Scotchman has been made, and letters of administration have been granted, memoranda in a book, which were made after the date of the will, cannot be treated as a codicil, and probate of them must be refused. *In re* SIR JOHN WEMYSS, **4 C. 721.**

(5)—*Will—Testamentary document—Will to have effect on contingency—Probate.*—A, being ill and away from home, wrote to his brother B, certain directions as to the management of his property, and concluded: "Brother, if I die of this sickness and C survive me, then, whatever property I have, you gill give one half to C," etc. In another and subsequent letter he wrote to B: "I don't think that the illness I am now suffering from will terminate fatally; but in case I should die, then you will give to C one-half of my Company's papers," etc. "I appoint you turney (executor) in all matters relating to C," etc. A recovered from the fever, but died suddenly a year later, without having made any other testamentary disposition of his property. In a suit brought by B as executor of A, according to the tenor of these documents against the widow of A, for the purpose of having probate of them granted to him as of the will of the deceased,—*Held* (reversing the judgment of *Macpherson, J.*) that the documents were only intended to have a testamentary effect in the event of A's having died of the sickness he was suffering from at the time of writing, and therefore probate which had been granted by the Court at the original hearing was ordered to be brought in and cancelled. KAMEENEE DOSSEE v. BISSONATH GHOSE, **2 Ind. Jur. N.S. 6.**

Hindu widow—Testamentary declaration—Declaratory suit—Cause of action—*See* DECLARATORY DECREE, SUIT FOR—REVERSIONERS, 7 A. 163=A.W.N. 1884, 337.

——**6.—Revocation.**

(1)—*Will—Revocation of will—Evidence—Onus.*—It is well settled that a will duly executed is not to be treated as revoked, either wholly or partially, by a will which is not forthcoming, unless it is proved by clear and satisfactory evidence that the latter will contain either words of revocation or dispositions so inconsistent with the dispositions of the earlier will that the two cannot stand together. It is not enough to show that the will which is not forthcoming differed from the earlier will, if it cannot be shown in what the difference consisted. It is also settled that the burden of proof lies upon the person who challenges the will that is in existence. SAHIB MIRZA v. UMDA KHANAM, **19 C. 444, P.C.=19 I.A. 83 =6 Sar. 180.**

Will—continued.

——6.—**Revocation**—*continued.*

(2)—*Will—Execution—Attestation, whether necessary—Prior Will—Revocation—Presumption.*—Attestation by witnesses is not required by law in the case of a Will made by a Hindu in the Punjab. Where no declaration of an intention to revoke a prior Will is alleged on the part of the testator, the mere preparation by his direction of a document which it executed, would operate as revocation, but which was never executed by him, cannot be regarded as amounting to a revocation. RAM NARAIN v. DAYA RAM, **27 P.R. 1883.**

(3)—*Destruction—Formalities—Revocation of will.*—Actual destruction or a formal revocation in writing are not essential to constitute revocation of a will. VENKAYYAMMA v. VENKATA RAMANAYANA, **4 Bom. L.R. 657.**

(4)—*Will — Revocation — Hindu Law—Father's power over self acquired property—Will not forthcoming—Secondary evidence—Presumption—Incompetency of defendant to make a new case in appeal.*—*Held*, that:—(1) in case of self-acquired property, a Hindu father is at full liberty to disinherit by will any of his sons. (2) Where a will is not searched for immediately after, and it is not shown that it did not exist at the time of the testator's death, the mere fact of its not forthcoming afterwards and of the testator's acting in some explainable instances against it, does not raise the presumption that it has been destroyed by the testator with intention of revoking it. (3) Where a defendant in the first Court only pleaded that the testator's conduct subsequent to the execution of the will showed that he had no intention to abide by its provisions and that the testator's conduct and that of the plaintiff operated to cancel the will, he cannot be allowed to set up in appeal a new case to the effect that the testator had destroyed the will with the intention of revoking it. HANWANTA v. PADMAN, **160 P.W.R. 1909.** (29 A. 82, 31 C. 885, *R.*)

(5)—*Joint Wills—Death of one party, revocation by the other.*—A joint Will is irrevocable, where the survivor has taken a benefit on the death of the co-testator. Where the surviving co-testator succeeds to the bequeathed property under the ordinary law of inheritance, he cannot be said to have received a benefit under the provisions of the Will. Persons may agree to make mutual Wills which remain revocable during the joint lives, by either with notice to the other. Where the joint will is a disposition by each testator of his own property without any arrangement between the two, the Will is revocable at the Will of either, and cannot be proved till the death of the survivor. MINAKSHI AMMAL v. VISVANATHA IYER, **5 Ind. Cas. 794=20 M L J. 339=33 M. 406.**

(6)—*Presumption as to revocation of Will in possession of testator not found at time of his death.*—In India there is no presumption that a Will has been revoked by the testator when it is shown that it was in his possession some time before his death but is not found at the time of his death. CHIDAMBARA PILLAI v. SWAMINATHAN, **13 M.L.J. 135.**

(7)—*Will by widow disposing of property—Suit to set aside such will—Cause of action.*—A suit brought to set aside a will executed by a Hindu widow, still living, purporting to dispose of immoveable property belonging to her husband, in favour of her daughter and the son of another daughter, should be rejected on the ground that the plaint discloses no cause of action; the will being a revocable instrument can take no effect until the death of the widow; and the cause of action does not arise until her estate comes to an end, as there has been no alienation of property or of any interest therein by such will. MUSSAMMAT BADHO BAI v. CHATTA RAM, **111 P.R. 1880.** [*Appr.*, 144 P.R. 1882.]

(8)—*Will—Revocation of—Registered will not found after death of testator—Evidence—Secondary evidence—Burden of proof.*—The plaintiff, a minor, claiming under a registered will of his grandfather, sued to set aside an alienation by his father of property included in the will. The original will was not forthcoming. A question arose whether a certified copy of the will was admissible in evidence. *Held*, that as, under the circumstance from the mere fact that the will was not forthcoming, it could not be presumed that the will was revoked by the testator, the certified copy of the will was admissible in evidence. PURAN v. TONI, **204 P.L.R. 1908.**

(9)—*Will—Revocation by subsequent will—Authority to adopt contained in the first will, not probated—Whether valid—Second will inoperative—Effect on the first will—Probate and Administration Act, s. 59, Indian Succession Act, s. 187, Hindu law (adoption).*—The plaintiff, the next reversioner, sued for a declaration that the adoption by a V's widow was invalid on the ground that the authority to adopt was contained in an unprobated will of 1889, which, it was contended, had been revoked by a will of 1890 admitted to probate, which did not contain any authority to adopt, and that in any case the will of 1890 must be taken to be the last will of V, until the grant is revoked, or the earlier will is admitted to concurrent probate. Subsequent to the first will, the testator adopted, and the second will provided that, in case of the adopted son's death, without issue, during the life-time of the widow, the property should be divided among the daughter's issue. *Held*, that the provision in the later will as to division among the daughter's issue was deliberately inserted in substitution of the authority to adopt in the earlier, and that, supposing the disposition in the second will to be operative, there would be a clear revocation. *Held*, also, that, as the second will was void and inoperative according to the Hindu law, as the properties dealt with were the joint family

Will—continued.

——6.—**Revocation**—*concluded.*

properties of himself and his adopted son, the authority to adopt in the earlier will was not effectually revoked by the later will. The effect of s. 59 of the Probate and Administration Act is that the estate of the deceased has to be applied by the executor with exclusive reference to the will of which probate has been granted, and without reference to anything contained in any other will not admitted to probate. That does not in any way affect the joint family property of the deceased, and his adopted son, and the earlier will is therefore admissible. S. 187 of the Indian Succession Act does not apply, as the defendants are not seeking to establish any rights as executors or legatees, and the objection to the admissibility of the first will therefore fails. S. 187 of the Indian Succession Act applies both to plaintiffs and defendants. (14 M. 454, *R.*) Even if s. 59 of the Probate and Administration Act, or s.187 of the Indian Succession Act applied, they would not preclude the Court from admitting the earlier will in evidence and taking it into consideration in a suit for declaration, which is a discretionary relief. VENKATA NARAYANA PILLAI v. SUBBAMMAL, **6 M.L.T. 116.**

(10)—*Probate—Will—New page of will not duly executed, substituted by testator after execution of Will—Dependent relative revocation.*—Where from the intrinsic evidence it appeared that the second of four sheets of paper constituting a Will had been substituted for the original second sheet, and the sheet so substituted was not duly attested, *held* that it was a case of dependent relative revocation; and that as there was no evidence as to the contents of the original sheet, probate of the Will as it originally stood could not be granted, and also that probate of the Will omitting the second sheet could not be granted, as such remaining portion contained only the appointment of executor and the residuary clause. KER v. MEAKIN, **20 B. 370.**

(11)—*Jew's will—First wife living — Jew's second marriage — Effect—Succession Act* (X *of* 1865), s. 56.—Will of a Jew made subsequent to his first marriage held revoked by second marriage made during life of first wife. GABRIEL v. MORDAKAI, **1 C. 148.**

——7.—**Miscellaneous.**

(1)—*Will — Blank spaces—Alterations and erasures — Presumption — Execution — Pencil writing subsequently—Desire of testator—Probate, grant of.*—The circumstance that blank spaces are left in the body of a Will is no valid objection to its being a valid Will. When a Will contains certain alterations and erasures, the presumption will be that they were made after the Will was executed. And if there is no evidence rebutting that presumption, they will form no part of the Will. A District Judge refused probate of a Will, because he held that it was an incomplete Will, being of opinion that the blanks, alterations and cancellations

Will—continued.

——7.—**Miscellaneous**—*continued.*

showed that the deceased intended it to be a draft, and not the final expression of his wishes. There was a pencil addition in it, and it was proved to have been made by the attesting witness, subsequent to the execution, at the desire of the testator. *Held* that, as such Will did not necessarily require to be signed by the testator, probate should be granted to include the pencil addition proved, but excluding all other additions or erasures or cancellations. PANDURANG HARI VAIDYA v. VINAYAK VISHNU KANE, **16 B. 652.** [*D.*, P.L.R. 1900, 251.]

(2)—*Act* XVIII *of* 1884 (*Punjab Courts*), *s.* 9—*Revocation of will—Ss.* 57, 58, *Indian Succession Act.*—S. 9 of the Act allows an appeal from the order of a Judge in chambers refusing probate of a will. Where a will is obliterated and lines drawn across the will so as to make the writing illegible and the word "cancelled" is written across the same, these are sufficient facts to show that it was done *animo revocandi* to destroy the will and that it had been duly revoked. THADDEUS v. THADDEUS, **6 P.R. 1899.**

(3)—*Legacy, specific or demonstrative—Particular fund not legally chargeable with payment — Demonstrative legacy, non-ademption of — Ss.* 137, 140, *Succession Act*, 1865.—Demonstrative legacies will not fail, if the particular fund, though in existence, cannot, by reason of some provision of law of which the testator was apparently in ignorance, be charged with the payment of the legacy in question. Where the hereditary *jagirs* of a testator were bequeathed to his surviving son, with a direction that out of the income of the said *jagirs*, his predeceased son's adopted son should receive a certain sum every year from the legatee, *held*, in the circumstances of the case, that the annuity was a "demonstrative legacy" within the meaning of ss. 137, 140 of Act X of 1865. BHAGWAN DAS v. RAM DAS, **109 P.R. 1908.**

(4)—*Heirs of testator.*—Where a deceased person leaves a will, his heirs on intestacy do not represent his estate. MATANGINI DASSEE v. CHOONEYMONEY DASSEE, **22 C. 903.**

(5)—*Ineffectual conveyance — Reference in Will—Effect.*—An ineffectual or inoperative conveyance may be so referred to in a Will as to be constituted a devise of itself, in which case the property passes by devise, but the conveyance so referred to does not acquire any greater force or effect *as a conveyance.* RAJU BALU v. KRISHNA ROW RAMACHANDRA, **2 B. 273.**

(6)—*Nuncupative Will—Suit for declaration of its nullity, when lies.*—In cases where property may legally pass by an oral Will, a suit may lie to have it declared null and void; for a claim under such a Will is not a bare assertion of title, but the setting up of a specific act by which title to property may be conferred. A right to have a document or act which obstructs

Will—continued.

——7. **Miscellaneous**—*continued.*

the title or enjoyment of property, cancelled or set aside or for an injunction against such obstruction, would be sufficient to sustain a declaratory decree SHEO SINGH RAI v. MUSSAMUT DAKIO, **2 C.L R. 193=5 I A. 87=1 A. 688, P C.=3 Sar 807.** [*R.*, U.B.R. 1892-1896 Vol. II, 623, U.B.R. 1892—1896, Vol. II, 529, 7 O.C. 187.]

(7)—*Direction for payment of debts—Decree against heirs for testator's debts—Charge on property.*—Neither a general direction in a will for payment of the testator's debt out of his estate nor a decree in a suit by his creditor against the heirs in their representative capacity, which by its terms is to be satisfied out of the assets of the testator, would create a charge on the testator's property mortgaged by an heir, so as to prevent the mortgagee from executing his mortgage decree against such property. RAM DHUN DHUR v. MOHESH CHUNDER CHOWDHRY, **9 C. 406=11 C.L.R. 565.** (4 C. 402, *Dist.*) [*R.*, 2 C.L.J. 138=10 C.W.N. 38, 45 P.W.R. 1908=52 P.L.R. 1908.]

(8)—*Persons taking property under Will—Liability for debts.*—Where, by a Will, the testator devised his property to his two daughters-in-law, widows of his predeceased sons, although they were not his heirs, *held* that they were liable to pay the debts due from the testator, whether the Will was genuine or not. If the Will was a valid and binding instrument, they were the legal representatives of the testator, and such property of his as had come into their hands would be liable for the satisfaction of any decree which the creditors might obtain. If the Will was not genuine, then, they, being in possession of the property left by the testator, which was liable for his debts, would be properly sued for his debts. GULABI v. ASA RAM, **A.W.N. 1881, 50.**

(9)—*Act* XL *of* 1858—*Debts of testator—Charge on specific property.*—Though the payment of debts due by a testator is a charge upon his estate, it is not a charge upon any specific portion of the property. GOPAL NARAIN MOZOOMDAR v. MUDDOMUTTY GUPTEE, **14 B.L.R 21.**

(10)—*Executor—Death of executor—Another executor.*—Unless it can be gathered from the will that the testator intended the person named to pay the debts and legacies under the will he cannot be held to be executor thereof. Where a testator appoints an executor and provides that in case of his death another should be substituted, on the death of the original executor though he has proved the will, the executor so substituted may be admitted to the office, if it appear to have been the testator's intention that the substitution should take place on the death of the original executor, whether happening in testator's lifetime or afterwards. MITHABAI v. CANJI, **4 Bom L.R. 9=26 B. 571.**

Will—continued.

——7.—**Miscellaneous**—*continued.*

(11)—*Executor according to the tenor—Trustees—Duties of the executors.*—In the course of his will the testator said: "My first wife (Lasma) shall act according to the advice of Sayaji and Dharmaji in all the above matters ...To all the rest of the estate which remains, my first wife Lasma is entitled. After them (*i.e.*, their death) the two trustees (Sayaji and Dharmaji) shall act in such a way that my name shall continue in a good manner...and the two trustees and the wife married by Lagna (making three persons) shall with one mind do some religious act after me, *i.e.*, my death." On a construction of this will: *Held*, (1) that Lasma was appointed an executrix according to the tenor of the will; and (2) that Sayaji and Dharmaji were simply co-adjutors and not executors according to the tenor of the will. SAYAJI v. MUTUTMABAI, **6 Bom. L.R. 78.**

(12) *Act* XL *of* 1858—*Executors holding certificate—Complaint against executors—Court not precluded from inquiring into, because of Will or certificate.*—The terms of s. 21 of Act XL of 1858 are general, and in the case of a complaint made against the executors, the Court cannot be taken to be precluded from enquiring into the case merely by reason of the Will and the existence of executors under it who have taken out certificate under Act XL of 1858. It is the duty of the Judge in such a case to examine the Will itself and also take evidence as to the truth of the complaint against the executors. NUND COOMAR GUNGOPADHYA v. RAKHAL CHUNDER ROY, **6 W.R. Mis. 123.**

(13)—*Will accepted and acted upon by legatees and family members of deceased—Right of third party to contest.*—One G, a Khatri of Multan, made a will by which he left all the immoveable property to his two grandsons, and outstanding debts due to him to his sons, the object avowedly being to prevent the sons, who were of extravagant habits, from making away with the immoveable property. The will was fully accepted by the sons and the family and was acted upon. It was found to be neither fictitious nor fraudulent. *Held*, that the will having been accepted by the persons concerned, could not be declared invalid on the motion of a third person, merely because he had a claim against property affected, when it was found to be neither fictitious nor fraudulent. JESSA RAM v. BHOJA RAM, **116 P.L.R 1901.**

(14)—*Will proved in former suit—Same parties—Subsequent suit—Impeachment.*—A Will established in a former suit cannot be impeached in a subsequent suit brought by the same party. MULRAZ LACHMIA v. CHALEKANY VENCATA RAMA JAGGANADHA ROW, **2 M I A. 54=1 Sar. 154.**

(15)—*Monthly allowance not charged upon property—Sale of property—Liability of purchaser.*—Where a testator by Will bequeathed all his property to his two grandsons, and

Will—continued.

—7.—**Miscellaneous**—*continued.*

gave a direction in the Will that a monthly payment of Rs. 15, which he had been in the habit of making to the plaintiff, who was his mistress, should be continued, but the property was not charged, with the payment of the annuity, *held*, that the plaintiff was not entitled to receive half of the amount of her maintenance from the purchaser of half of the property of the testator from one of the grandsons. BHAGWATI PRASAD v. DAUNA KAUR, **1 A.L. J. 327.**

(16)—*Hindu widow, capacity of, to make a will—Her exclusive property.*—There is no rule of law, which forbids a Hindu widow from making a will with regard to property which belongs exclusively to herself. BEHARY LALL SANDYAL v. JUGGO MOHUN GOSSAIN, **4 C. 1 =2 C.L.R. 422.**

(17)—*Succession—Hindus — Mahomedans—East Indian Christians—Will—Domicile—Construction of will—"Children"—Will—Accretion to property from rents.*—The succession of a Hindu is, as a general rule, regulated by Hindu law, of a Mahomedan by the Mahomedan law, and of an East Indian Christian by the English law ; but in every case, for the purpose of determining the *status personalis*, regard must be had to the mode of life and habits of the testator and to the usages of the class or party to which he belonged. If no specific rule can be ascertained to be applicable to a case, it should be determined according to equity, justice and good conscience. Where a testator has an ascertained domicile, the construction of his will must depend on the law of that domicile ; but if no particular law is applicable, the Will is to be interpreted by the principles of natural justice. Construing a Will, according to the principles of natural justice, and applying to the word "children" the signification in which the testator used it as gathered from the Will itself, the word "children" was held to include illegitimate children, the offspring of sons, when acknowledged or treated as his children by their putative father. [*F.*, 31 A. 239=24 A.W.N. 213 ; *R.*, 5 B. 154, 23 B. 539, 6 O.C. 306.] Where by Will the income of certain estates was left to devisees for life, with a gift over of the *corpus* on their death and a portion of the income, instead of being divided among the tenants for life, was applied to the purchase of other estate, *held* that these estates did not pass to the remaindermen, but formed the absolute property of the tenants for life and passed to their devisees. MUSSAMAT F. BARLOW v. SOPHIA EVELINE ORDE, **5 B.L.R 1 P.C.=13 W.R P.C. 41=13 M.I A. 277= 2 Sar. 540=2 Suther. 324.** [*R.*, 3 A. 91, P.C.=7 I.A. 196=7 C L.R. 295.]

(18)—*Gift to a class—Khoja Mahomedans.*—Where a Khoja testator makes a will in Bombay whereby he leaves an annuity to his daughter, and after her death, to her children, the bequest enures to the benefit of such of her children as are in existence at the death of the testator. ADVOCATE-GENERAL v. KARMALI, **6 Bom. L. R. 601=29 B. 133.**

Will—continued.

—7.—**Miscellaneous**—*continued.*

(19)—*Bequests under Will of Parsi—Perpetual trusts for performance of religious ceremonies—Clause restraining alienation, invalidity of.*—A Parsi by his Will declared a trust with reference to certain immoveable property of his, setting it apart for the performance of certain religious ceremonies with a direction in the Will that the said property should not be alienated at all. It appeared from the evidence in the case that the benefits which, according to the belief of the Parsis, were deemed to result from the ceremonies specified in the Will, were merely consolation to the spirits of certain dead persons and comfort to certain living persons, believed to be afforded by certain of the *frohars* (the guardian spirits or prototypes of the dead). Trusts of immoveable property, in perpetuity would be legally valid only when they are for public charitable and beneficial objects, and the trusts under the Will in this case, having been declared merely for the advantage and benefit of private individuals only, were not legal and valid trusts. Also, the direction in the Will that the property should not be sold or mortgaged was held to be neither valid nor binding. Exception obtains from the rule of perpetuities, only in favour of gifts for purposes useful and beneficial to the public, which are alone "charitable uses" in the wide sense of the term, and neither of the objects of the trust in this case was for any general public use. LIMJI NAUROJI BANAJI v. BAPUJI RUTTONJI LIMBUWALLA, **11 B. 441** [*N. F.*, 33 B. 122=10 Bom.L R. 417; *Appr.*, 15 M. 424; *R.*, 18 M. 201, 20 B. 511, 1 Bom. L.R. 721.]

(20)—*Will—Nuncupative—Roman Catholics—Portuguese—Intestate succession.*—A suit in which the parties were Roman Catholics of Portuguese extraction was remanded to the lower Court for the trial of the following issues:—(1) whether the plaintiff can, under the law current amongst members of the Roman Catholic Church in Chittagong, take under a nuncupative Will or not; and (2) if not, to what is plaintiff entitled under the law regulating successions of intestates amongst members of the Roman Catholic Church ? ANTONY REBEIRO v. MRS. SARAH REBEIRO, **3 W.R. 63.**

(21)—*Will of East Indian Testatrix out of Civil jurisdiction of High Court—English law.*—The provisions of the English law as to the administration of and succession to the estate of a British subject dying testate apply to the will of an East Indian testatrix (the illegitimate daughter of a Mahomedan woman) who resided and died without the limits of the ordinary Civil jurisdiction of the High Court. HOGG v. GREENWAY, GREENWAY v. HGGG, **Cor. 97=Bourke A.O.C. 111.**

(22)—*Will—Military testamentary document—Application for probate—Lapse of time—Invalidity of will.*—A military testament valid in

Will—continued.

——7.—**Miscellaneous**—*continued.*

its inception may be deprived of its privilege by lapse of time. *In re* GODBY, **1 Hyde 196.**

(22-a)—*Reg.* XVIII *of* 1827—*Will—Stamp.*—Reg. XVIII of 1827 does not require a will to be stamped during the testator's lifetime. WEBBE v. LESTER, **2 B.H.C. 52.**

(23)—*Proof of execution and registration—Enquiry into suspicious circumstances, if any.*—It was objected in this case that the lower appellate Court had erred in law in having dealt with the case in the manner that it did and that the Judge for deciding the main issue, whether the document pleaded as the Will of the deceased testator was really his Will or not, should not have stopped with merely finding that the document was, as a matter of fact, executed and registered by him. The High Court held that the Judge was wrong in having thus treated the case thinking that it was beyond the province of the Court to inquire into circumstances connected with the execution of the document. *Prima facie*, the Will was an inofficious one and there were suspicious circumstances in the case of the plaintiff. The Judge should have satisfied himself that the testator had voluntarily, and, without any undue influence exercised on him, executed the Will fully understanding its real effect. KISTO CHURN MOJOOMDAR v. DWARKANATH BISWAS, **10 W.R. 32.**

(24)—*Deposit of will under Act* VIII *of* 1871 *(Registration) is no registration.*—The deposit of a will under Part IX of Act VIII of 1871 would not amount to the registration required under s. 13 of Act I of 1869. *Quære.*—Whether a mere right to maintenance would constitute the "interest" under s. 13 of Act I of 1869. ABDUL RAZZAK v. AMIR HAIDAR, **10 C. 976, P.C.=11 I.A. 121=4 Sar. 555.**

(25)—*Effect of pleadings—Causes of action—Civ. Pro. Code (Act* VIII *of* 1859), *s.* 2—*Issues really decided, though not in form*—Res judicata.—Plaintiff, as the adopted son of one C, brought this suit to recover certain immoveable and moveable properties belonging to the estate of C. The defendant was the widow of the devisee of C under a Will left by the latter. The plaintiff's contention was that the real property in dispute was either ancestral property or property acquired by C from the income of such property and, as such ancestral, and that C, had no right to dispose of any of them by Will. The defence was that the deceased C had, according to the *Mitakshara* law, power to dispose by Will of property acquired by him out of the income of ancestral property and that such property was self-acquired. In a former suit between the same parties instituted by the present plaintiff for the cancellation of several alienations made by C, the present defendant was a defendant. The effect of the pleadings in that suit was to put in issue the question, among others, whether C had power to dispose of the real properties by the will in

Will—continued.

——7.—**Miscellaneous**—*continued.*

dispute; but the question actually dealt with in the case was as to whether or not the testamentary disposition was assented to by the present plaintiff; and it was decided that he had assented to the will. *Held*, that the effect of the pleadings in the previous suit being that the plaintiff sought therein to cancel the Will on the ground of the want of legal capacity in C to make a testamentary disposition of the real property by reason of its being ancestral property (*i.e.*) partly inherited and partly acquired out of the income of such property, the decision barred the present suit, though an issue in the form in which it was now raised had not been distinctly raised therein. The expression "cause of action" in s. 2 of Act VIII of 1859 (Civ. Pro. Code) is to be construed with reference rather to the substance than to the form of action. Viewed in this light, the former suit was, in substance, taking the pleadings and the grounds of appeal into consideration, one to declare the Will invalid on the ground of the want of legal capacity in C to devise the property dealt with in the Will. S. 2 does not prevent the operation of the general law relating to *res judicata* founded on the principle "*nemo debet bis vexari pro eadem causa.*" SOORJOMONEE DAYEE v. SUDDANUND MOHAPATTER, **212 B L.R. 304, P C.=20 W.R 377=Sup. Vol. I.A. 212=3 Sar. 285.** [*F.*, 6 C. 319, F.B.=7 C.L.R. 227; *Appl.*, 1 C. 144=2 I.A. 283; *Appr.*, 21 W R. 207, 24 W.R. 304, 11 C. 301, P C =12 I.A. 23, 10 B. 439, 15 M. 494, 21 C. 430; *R.*, 7 N.W.P.H.C.R. 17, 60, F.B., 3 B. 3, 4 C. 1906, P.C.=5 I.A. 149, 6 C. 171=6 C.L R. 439, 6 C. 406, 13 B. 567, 14 B. 31, 19 C. 372, 17 A. 174, 25 C. 136, 25 B. 189, 6 C.L.J. 621, 12 C.W.N. 739=9 C.L J. 597; *D.*, 24 C. 83]

(26)—*Hindu Law—Question re—Legal effect of circumstances in Will—Practice—Life estate—Residuary devise of furniture, moneys, stocks, Jewellery, if passes all moveable property—Charitable bequest to poor relations—Uncertainty.*—It is not the practice of the Court to decide questions *re* the legal effect of certain clauses in a Will, when such questions will only arise on a contingency which has not yet happened and may never happen. Where a testator devised that B should be entitled to the rents and profits of a specific immoveable property during her life, and later, directed his executor to sell the residue of his immoveable property and make over the proceeds thereof to a University, *held*, that B was entitled to the life-interest and the University to the reversion in the said property. Residuary devise of the testator's "furniture, jewellery, moneys and securities for moneys, *held*, (1) in the circumstances of the case, not to cover all of the testator's moveable property, (2) sharers in a joint stock company, not secured on the property of the company, do not fall within the description of securities for moneys, (3) a watch which neither consists of precious stones nor is made of precious metal would not pass under a bequest of jewellery, (4) pictures hanging on the

Will—continued.

——7.—**Miscellaneous**—*continued.*

walls would pass under the bequest of furniture. A bequest to the testator's poor relations and dependents and servants is a valid charitable bequest. Court's interference with the discretion of executors appointed by testator. The Court will not interfere with the exercise of the executor's discretion, unless it is shown that the discretion is being improperly exercised. MANORAMA DOSSI v. KALI CHARAN BANERJEE, **31 C. 166=8 C.W.N. 273.** [*R.*, 11 O C. 271.]

(27)—*Application for probate—Question of title—Bequest of property which testator had no power to deal with—Revocation of probate—Person claiming interest in estate of testator.*—It is settled law that the Probate Court should not go into questions of title, and that grant of probate does not prejudice a party, claiming specific property, when he is not an heir. It is also settled law that a Court cannot refuse probate, merely because the testator had not power to dispose of property dealt with by the will. (4 C. 1, 18 B. 749, 17 M. 373, *R.*) S. 250, Succession Act, provides for interference by persons claiming to have an interest in the estate of the deceased and by no others. (15 W.R. 351, *F.*) When the son-in-law of the testatrix whom his wife had predeceased applied in his own right and on behalf of his children and under his guardianship for revocation of the probate of the will of his mother-in-law and the application was rejected, and he appealed, but not on behalf of his children, and the appellant's claim was that a house claimed by the respondent was his property adversely to, and not through, the testatrix. *Held*, that he had no *locus standi* in his own right, and that his children not being parties to the appeal, and there being no ground common to him and his children, the appeal must be dismissed. J. B. RALPH v. MRS. G. R. HALE, **2 P.L.R. 1902=7 P.R. 1902.**

(28)—*General legacy—Suit to recover legacy before assets and liabilities were ascertained—Suit premature—Liability of plaintiff to execute indemnity bond.*—A Hindu died in the mofussil leaving a Will. The executors not having consented to pay a general legacy, the legatee sued to recover the amount of the legacy. The executors contended that, as the assets and liabilities of the deceased had not yet been ascertained, the suit was premature. Though no amount had been realized by the executors at the date of the suit, it was found that money far in excess of the liabilities had become realized subsequently. A suit instituted by the brother of the deceased testator to set aside the Will was then pending. *Held* that, though the suit was premature, it was desirable in order to avoid further litigation to pass a decree for the amount found due to the plaintiff. But the decree amount was not to be paid to the plaintiff unless she executed a bond undertaking to indemnify the executors for any loss which might arise in consequence of the payment of the legacy being declared void in the suit which was then pending. RAJAMANNAR v. SUBBALAKSHMI, **2 M.L.J. 182.**

(29)—*Suit for administration, obtaining probate of will constitutes part of the cause of action in a—Court granting probate, competency of, to determine the validity of the will—Executor estopped from impeaching will.*—The taking out of probate from the High Court, undertaking thereby, to administer an estate, constitutes a material part of the cause of action for a suit for administration. It has often been held that an executor sued in that capacity is subject to the jurisdiction of the Court granting the probate. The contention that, the inclusion of the immoveable property of the testator situate in foreign territories, in the present suit for administration, would be to pronounce on the title to it, involving, as such inclusion would, the over-ruling of the defendants' objection as to the incapacity of the testator to will away that portion of the property was *held* untenable for the reason, that, where the Court has jurisdiction to make a grant of probate, it has also the power to decide whether and how far the will is a valid testamentary disposition and, in such cases, the Court has the same power with regard to any equities between persons within its jurisdiction respecting lands or assets in a foreign country as it has in the case of lands or assets locally situate. *Held*, further, that inasmuch as the defendant in the present case having, with full knowledge of circumstances bearing on his rights as the testator's son, accepted the office of executor, obtained probate and under its authority collected assets and otherwise so acted as to cause the plaintiffs to alter their position, the defendant was estopped from impeaching the will, repudiating his fiduciary position, or setting up in respect of the property dealt with by the will any rights inconsistent with the dispositions and conditions therein. SRINIVASAMOORTHY v VENCATA VARADA IYANGAR, **1 M.L.T 71=16 M.L.J. 238=29 M. 239.** [*R.*, 17 M.L.J. 304=30 M. 438, 3 Ind. Cas. 193=32 M. 469=19 M.L.J. 457.]

(30)—*Application for probate—Appeal by a legatee's representative—Competency of—Points to be considered in such suit—Succession Act*, 1865, *ss.* 46, 48.—A person, who was a party to the proceedings in the Lower Court interested in having a will propounded and maintained, can appeal against the grant of letters of administration without the will annexed, even though the executor prefers no appeal and does not prosecute his application for probate. In application for probate and letters of administration, the points to be considered are whether the will propounded was the will of the testator, whether it was executed by him, whether he did it voluntarily and in a sound state of mind, any other question, such as the effect of the will being not properly before the Court. The principles of ss. 46 and 48, Succession Act (X of 1865) are equally

Will—continued.

—7.—**Miscellaneous**—*continued.*

applicable to all testamentary dispositions. MUSST. BALI v. MUSST. HUSAIN BIBI, **58 P.R. 1894.**

(31)—*Specific Relief Act* (I *of* 1877), s. 42—*Declaratory decree—Plea to maintainability of suit cannot be allowed for first time in appeal.*—A Hindu widow made a Will of the property, which was the subject of a previous award, and in which, by the award, she was entitled only to a life estate, the plaintiff being entitled thereto after her death. The Will was in favour of the defendants who thus, it was contended, became, in the language of s 42 of the Specific Relief Act, "interested to deny" the plaintiff's title as reversioner. The plaintiff in this suit for a declaration as to the nullity of the said Will, had impleaded the testatrix also as defendant; but while the suit was pending she died, and ultimately a decree was passed in plaintiff's favour and the Will was declared invalid. The defendants, on appeal, contended for the first time that the allegations in the plaint did not constitute a case in which, in the exercise of a sound judicial discretion, a declaratory decree ought to be made. *Held*, that it would be unjust to allow the defendants to benefit by this technical ground which they had failed to take before the lower Court, especially after they had failed to resist the plaintiff's claim on the merits. *Held*, also that after the widow's death there was still the same cause of action against the defendants as existed at the time the plaint was filed, *viz.*, that, they were "interested in denying the plaintiff's title" MANGANLAL PURUSHOTTAM v. GOVINDLAL NAGINDAS, **15 B. 697.** [*R.*, 26 A. 233=31 I.A. 67=7 O.C. 239, P.C.]

(32)—*Executor who once acts under a will cannot renounce the duties—Practice—Suit for accounts from executor—Application to take accounts on the footing of wilful default—Practice as to making the application—Heir suing the executor for accounts—Limitation—Limitation Act* (XV *of* 1877), *s.* 10, *sch* II, *art.* 120.—In law a very small interference or intermeddling with the estate of his testator on the part of a party appointed executor under a will is sufficient to charge him with liability as executor. An executor once having acted unquestionably as an executor cannot renounce that character and all the liabilities which attach to it; having once acted, the subsequent renunciation is void, and he continues liable to be sued in the character of an executor. In an action against executor for accounts, it is not necessary, when making a reference to the Commissioner to take accounts, to give leave to the plaintiff to make an application to have accounts taken on the footing of wilful default pending the reference. Modern practice allows of an order charging wilful default being made at any time during the continuance of the action on a proper case being shown. In a suit brought by the plaintiff against the executors of the will of her grand-father, praying for a declaration that in the events that had happened, she was entitled absolutely and solely to the property left by her grand-father, and for account of the property in the hands of the executors, the plaintiff is only entitled to accounts from the defendants for six years preceding the suit, as she took no interest under the will and the executors were not trustees for her and the property did not vest in them for any specified purpose in her favour. Such a suit is not a suit for the purpose of following such property in the hands of the executors and trustees. AYSHABAI v. EBRAHIM HAJI JACOB, **10 Bom. L R. 117=32 B. 364.**

(33)—*Probate—Question to be decided by Court—Limitation—"Disposing mind"—Proof—Burden of proof—Probate and Administration Act* (V *of* 1881)—*Limitation Act* (IX *of* 1908), *sch.* I, *art.* 181.—In proceedings under Act V of 1881 when Probate of a will is sought, the Court is bound to grant probate, unless it finds that the Will was not executed by the testator or that he was not in a state of mind competent to exercise his testamentary powers, or that the Will was not the testator's own voluntary act. The Court has no concern with the questions whether the Will, if proved, will be effectual or valid, or whether it can affect certain parts of the property with which it purports to deal. The mere fact that a Will, if proved, might, in view of a previous decree of a Civil Court, prove ineffectual, is no ground for refusing to grant probate; nor is the Court competent to consider the question whether the Will is a valid disposition of property by the testator (55 P.R. 1894, *F.*; 12 B. 164, 18 B. 749, *R.*) The provisions of art. 181 of the Limitation Act, 1908, have no application to petitions for probate. Consequently, an application for probate made four years after the death of the testator is not time-barred. (19 C. 48, *F.*) The mere execution of a Will raises a presumption that the maker of it knew and approved of its contents (21 C. 270, *Rel.*) But the mere fact that the testator understands that he is making a Will, and by it giving the whole of his property to one object of his regard is not sufficient proof that he had "a disposing mind" He must also have capacity to comprehend the extent of his property and the nature of the claims of others whom, by his Will, he is excluding from all participation in his property. He must be able to dispose of his property with understanding and reason. He must be able to understand his position, to appreciate his property and to form a judgment with respect to parties whom he chooses to benefit by it. In the case of an unofficious Will, made behind the back and to the detriment of, one of the legal heirs, and at a time when the testator was practically at death's door, the burden of proving that the testator had a "disposing mind" lies upon the propounder of the Will. A Hindu lady, who had been ill for about a year before her death, executed a Will within a few hours of her death. At

Will—continued.

——7.—**Miscellaneous**—*continued.*

that time she was practically unable to speak and had to communicate her wishes by signs. She left all her property to a child who had been adopted a few days before her death. The person who had a great deal to do with the drawing up of the Will was adverse to the legal heir. The testatrix had no reason to favour the child to the prejudice of the heir. An application for probate was not made till after the expiry of four years from the date of her death: *Held*, that, when the testatrix executed the Will, she had not sufficient understanding to comprehend the extent and consequences of her act that by the will she was depriving one of the heirs of all participation in the property. The petition for probate was consequently refused. PANDIT INDAR NARAIN SHIV PURI v. PANDIT ONKAR LAL, **141 P.L. R. 1911.**

(34)—*Burden of proof—Suit for declaration that a person died intestate—Plaintiff's omission to let in any evidence—Omission to cross-examine witnesses—Presumption.*—In a suit for a declaration that a certain person died intestate, the burden of proof is upon the person who sets up a Will and not upon the plaintiff who impeaches it. The fact that the plaintiff asserted that he would prove "the spurious character of the Will and the circumstances attending its preparation and registration—if necessary" and that he omitted to adduce any evidence to show that the Will was a forgery, does not raise any presumption of the genuineness of the Will. That fact of the plaintiff's omission to cross-examine the witnesses called by the Court who spoke about the Will and whom he was not bound to examine and whom he could not have examined except with the permission of the Court, does not raise any presumption of the genuineness and validity of the Will. The plaintiff is perfectly justified in waiting until evidence in support of the Will is produced at the trial. SUKH DEI v. KEDAR NATH, **5 C W.N. 895, P.C.=28 I.A. 186=23 A. 405=3 Bom. L.R. 704=8 Sar. 109.**

(35)—*Act* IX *of* 1850, *s.* 32 *Suit for distributive share under an intestacy—Legacy—Deposit Non-joinder of parties—Construction.*—One K, the plaintiff's uncle, left two widows, M and C, and a Will by which it was provided that each of his widows should receive Rs. 5,000 for her expenses and that any unexpended balance of such sum should, at the death of each widow, go to his heirs. M instituted a suit against the executors of her husband's Will, which was eventually settled for Rs. 10,000 and the major portion of this sum she placed with a firm of which N was one of the partners. It was to be invested for her in N's own name and he was to pay her such interest as the investment yielded him On the dissolution of this firm, the money deposited by M was made over to N alone and on N's death, the estate of N and with it the money deposited by M, came

Will—concluded.

——7.—**Miscellaneous**—*concluded.*

into the hands of the two sons of N, the defendants in this suit. The heirs of K at the time of the death of M were the plaintiff and the plaintiff's two cousins. Plaintiff sued the defendants as heirs and legal representatives of N for a third share of the balance of money deposited by M and interest on the plaintiff's share of the deposit. *Held* that this was not a case where the demand was for part of a distributive share under an intestacy or a legacy under a Will within the meaning of s. 32 of Act IX of 1850, and that the liability of the defendants arose from a contract made between him and M when the money was deposited and that the defendants had the right to have joined in the suit against them all persons claiming to be entitled to any interest in the sum deposited. What is intended by the words "distributive share under an intestacy or a legacy under a Will" in s. 32 of Act IX of 1850 is, where the person entitled to a share of property in the case of intestacy is bringing a suit against the person who has the administration of the property; in the case of a legacy where the suit is brought for legacy against the person who has the administration of the property, whether as executor, or in some other capacity, and is liable to pay the legacy. HARAN CHANDRA MOOKERJEE v. NANDAGOPAL MUTTY LALL, **13 B.L.R. 142=22 W.R. 71.**

This Circular circulates Rules relating to the custody and preservation of Wills. Cir. No. 34, dated the 3rd December 1867, **8 W.R. Civil Circular Orders, p. 12.**

Wills.

See ACT XXV OF 1838.

Winding up of Company.

See COMPANY.

Winding up of a Company—*See* ACT VI OF 1882, s. 128, 10 Bom. L.R. 107=32 B. 415.

Effect of winding up order where expenditure, incurred by agent before such order, comes within s. 221, Contract Act—*See* CONTRACT ACT, 1872, s. 221, 3 M.L.T. 247=31 M. 123=18 M.L.J. 251.

Window.

(1)—*Easement—Privacy—Injunction.*—The invasion of privacy by opening windows is not a wrong for which an action will lie. SAYYAD AZUF v. AMEERUBIBI, **18 M 163.**

Doors and windows of building—Liability for separate attachment in execution—*See* ATTACHMENT—SUBJECTS OF ATTACHMENT, 11 C. 164

Interpretation of the word—*See* DEED—CONSTRUCTION OF DEED, 2 Bom. L R. 279.

Enjoyment of light through—short of prescriptive period — Obstruction to light by Stranger—Right to sue for injunction against such stranger—*See* EASEMENT, 5 M.L.J. 24

Window—*concluded.*

See EASEMENT, 91 P.R. 1869, 96 P.R. 1876

Agreement preventing acquisition of easement of light and air to—*See* EASEMENTS ACT, 1882, s. 15, Expl. 1, 2 Bom. L.R. 518 = 24 B. 156.

Projection of a balcony so as to overlook a window—*See* EASEMENTS ACT, 1882, ss. 15, Expl. 1, 16, 17, 18, 2 Bom. L.R. 454.

Suit to have—removed—Invasion of privacy of woman—*See* JURISDICTION OF CIVIL COURTS, 5 B.L.R, 677, Note.

See JURISDICTION OF CIVIL COURTS, 3 M.H.C. 141.

Ancient lights—New window—Enlargement of window—Obstruction—*See* PRESCRIPTION—EASEMENTS—LIGHT AND AIR, 7 C. 453.

Right to have window closed—Invasion of privacy, comfort, and ventilation—*See* PRESCRIPTION—EASEMENT—LIGHT AND AIR, 2 Agra 269.

Withdrawal of Appeal.

(1)—*Right to withdraw appeal—Permission of Court.*—An appellant has no right to withdraw an appeal without the permission of the Court. Where the appellant had given notice of the withdrawal of the appeal before the day of hearing and notice of withdrawal had been given to the respondent who had previously incurred costs in the appeal, *held* that the appellant was not at liberty to withdraw the appeal and that the appeal should be set down for hearing. KAREEM BEE v. BEEGAM BEE, **3 M.H.C. 368.**

(2)—*Appeal to Privy Council — Practice.*—An appeal to the Queen in Council was allowed by the High Court in a suit instituted by a Hindu widow as guardian of her husband's adopted son, a minor. After the allowance of the appeal and transmission of the record to *England*, the adopted son, having become of age, petitioned the High Court for the withdrawal of the appeal. The High Court referred the application to the Judicial Committee. On a petition by the respondents, founded on these proceedings, to dismiss the appeal, the appellant resisted the application on grounds, first, that, as a Hindu widow, she had preferable title to the estate to the adopted son; and secondly, with respect to the costs incurred by her as guardian in bringing the suit. *Held*, dismissing the appeal, *simpliciter*, (1) that, as the adopted son was of age and *dominus litis*, and had directed the withdrawal of the appeal, the appellant had no *locus standi*; (2) that any claim she had as widow must be the subject of an independent suit; and (3) that any costs incurred by her were to be recouped from the adopted son's estate. RANEE BISTOOPRIA PUTMADAYE v. NUND DHUL, **13 M.I.A. 602 = 6 B.L.R. 190 = 2 Suther. 391 = 2 Sar. 631.**

Order of Court on, not a decree—*See* U.P. ACT XII OF 1881, s. 145, 6 O.C. 48.

Withdrawal of Appeal—*concluded.*

Civ. Pro. Code, 1882, s. 561, objections filed under, respondent cannot claim to be heard on, after—*See* APPEAL—OBJECTIONS BY RESPONDENTS, 8 A. 551.

Respondent who has filed objections, right of, to appeal—*See* APPEAL—MISCELLANEOUS, 9 C. 738 = 12 C.L.R. 395.

See APPEAL TO PRIVY COUNCIL—GENERAL, 4 M.L.J. 112, P.C.

See CIV. PRO. CODE, 1908, O. XLI, r. 4, 16 M. 293.

See LIMITATION ACT, 1908, ss. 4, 5, 17 A. 518 = A.W.N. 1895, 115.

See PAUPER APPEALS, 18 B. 464.

Withdrawal of Application for Execution.

(1)—*Withdrawal of execution application, if step-in-aid of execution.*—An application to withdraw a pending application for execution with liberty to put in a fresh application later on is not a step-in-aid of execution. TARAK CHUNDER SEN v. GYANADA SUNDARI, **23 C. 817.** (16 A. 75, Not *F.*)

See CIV. PRO. CODE, 1908, O. XXIII, r. 1, s. 141, 17 A. 106 = 22 I.A. 44, P.C.

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWERS OF COURT, 12 A. 392, F.B. = A.W.N. 1890, 119.

Sale of pending an application for execution—Subsequent—by the decree-holder—Warrant not to interfere with the capability of execution of decree sold—*See* EXECUTION OF DECREE—MISCELLNEOUS, A.W.N. 1890, 169.

See EXECUTION OF DECREE—MISCELLANEOUS, A.W.N. 1890, 9.

See LIMITTION ACT, 1908, ART. 182—APPLICATION IN ACCORDANCE WITH LAW, A.W.N. 1891, 154.

Withdrawal of Claim.

(1)—*As to part of properties, effect of, on jurisdiction of Court.*—Where the parties to a suit after the institution of the suit in the Court in which part of the property was situated, happened to compromise the claim so far as it related to the property within the jurisdiction of such Court, the subsequent withdrawal of the claim on the ground of the compromise entered into with the defendants who had it in their possession, could not, in the absence of a positive rule of law, operate to take away the jurisdiction which had once vested, unless the compromise was shown to have been otherwise than *bona fide* and a mere contrivance to defeat or a fraud upon the policy of the rule of procedure as to local jurisdiction. KHATIJA v. ISMAIL, **12 M. 380.** [*R.*, 16 A. 359, 4 M.L.T. 392 = A.W.N. 1908, 235 = 5 A.L.J. 647 = 30 A. 560.]

(2)—*Withdrawal of portion of claim by plaintiff—Return of plaint for amendment—Supplementary petition for whole claim, effect of.*—

Withdrawal of Claim—*concluded.*

Where a plaintiff who has originally withdrawn a portion of his claim, on his plaint being returned to him for amendment, has in effect by an added petition cancelled the proposed relinquishment of part of his claim, he may be held not to have voluntarily relinquished it. SYAD MUHAMMAD KHAN v. JAI SUKH, **88 P.R. 1880.**

Withdrawal of Insolvency Application.

See INSOLVENCY—GENERAL, 7 B. 411.

Compromise with creditors—Of insolvency—*See* INSOLVENCY—MISCELLANEOUS, 6 B.L.R. 558

Withdrawal of Powers.

See CIV. PRO. CODE, 1908, SS. 36, 37, 19 M. 445.

Withdrawal of Suit.

See CIV. PRO. CODE, 1908, O. XXIII, rr. 1-2.

(1)—*Practice—Permission to withdraw from suit—Duty of Court—Civ. Pro. Code (Act V of 1908), O. 23, r. 1.*—Permission to withdraw from a suit with liberty to bring a fresh one should not be lightly granted. Before granting such permission, the Judge must satisfy himself that there are formal defects by reason of which the suit must fail. BESHASHER DAS v. ABDUL JALIL, **5 Ind. Cas. 546.**

(2)—*Act X of 1859—Suit—Withdrawal—Fresh suit.*—Act X of 1859, did not contain any section corresponding to s. 97 of Act VIII of 1859. A plaintiff who withdraws a former suit without obtaining any express power from the Court to institute a fresh action is not precluded from bringing such fresh action under Act X of 1859. MODHOO SOODHUN MULLICK v. PANTH COWREE MULICK, **7 W.R. 302.** (1 Marsh 148, 150, *F.*)

(3)—*Suit—Omission of part of claim—Withdrawal of suit—Fresh suit—Addition of portion of claim omitted—Act* VIII *of* 1859, *ss.* 7 and 97.—Where, in the first suit, a portion of the claim was omitted, and the suit withdrawn with permission to bring a fresh suit, which should include the portion omitted in the first suit, *held* that the additional portion of the claim included in the fresh suit brought, is not barred under s. 7, Act VIII of 1859. ILAHI BAKSH v. IMAM BAKSH, **1 A. 324.** (Decision of All. H. C. in S. A. No. 180 of 1876, *R.*) [*R.*, 17 A. 53, 14 C.P.L.R. 105.]

(4)—*Act* VIII *of* 1859, *s.* 97—*Suit withdrawn—Fresh suit--Suit to declare documents spurious*—Onus *of proof.*—Where a plaintiff has not been able to show, nor is there anything on the record to indicate, that he did obtain the Court's permission to withdraw the former suit, he would be precluded from bringing a fresh suit on the same matter under s. 97 of Act VIII of 1859. In a suit to have it declared that a document

Withdrawal of Suit—*continued.*

filed by the defendant in a former suit is spurious, the *onus* of proving such allegation is clearly on the plaintiff, and not on the defendant to prove the genuineness of the document. ABOO TALE— v. ABDOOL NUBEE, **20 W.R. 415.**

(5)—*Act* VIII *of* 1859, *s.* 97, *not applicable to rent suits.*—S. 97 of Act VIII of 1859 does not apply to suits instituted under Act X of 1859, and does not preclude a person who has instituted and withdrawn a suit for arrears of rent from bringing subsequently a fresh suit for the same arrears. BEER CHUNDER JOOBRAJ v. TARINEE CHURN ROY, **11 W.R. 46.** (Marshall Rep. 148, *F.*)

(6)—*Act* VI *of* 1862 (*B.C.*), *s.* 20—*Scope of—Civ. Pro. Code*, 1859, *s.* 256—*Act* X *of* 1859, *s.* 110.—S. 20 of Act VI of 1862 (B.C.) refers to a suit which is as yet untried. It does not apply to a suit already under trial, and the Collector is not therefore empowered under the section to withdraw a suit under trial before a Deputy Collector for the purpose of being tried elsewhere. S. 256 of Civ. Pro. Code, is not applicable in the case of a sale which has taken place in execution of a decree in the Collector's Court. S. 110 of Act X of 1859 is confined to provisions which have reference to procedure of sale and not to the procedure by which the parties obtained a remedy for an improper sale, and consequently, s. 256, Civ. Pro. Code, which provides a method by which the person aggrieved can come into Court after a sale to get that sale certified, is not one of the provisions referred to by s. 110. ANUND MOHUN SURMAH TALOOKDAR v. GRIJA KANT LAHOORY, **13 W. R. 222.** [*R.*, 38 C. 832.]

(7)—*Withdrawal of suit—Act* VIII *of* 1859, *scope of.*—The prohibitory clause of s. 97, Act VIII of 1859, does not apply to suits under Act X of 1859. RAMNATH DUTT v. JOY KISHAN MOOKERJEE, **11 W.R. 3.** (Marshall's Rep. 148, *F.*)

(8)—*Act* X *of* 1859—*Withdrawal of claim—Jurisdiction—Costs.*—A plaintiff may withdraw his claim at any time between the institution of the suit and the decree. The Court should then confine itself to the question of costs. RAMACHARAN BYSACK v. MRS. R. HARVEY, **2 B.L.R.S.N. 11-b.=10 W.R. 373.** (1 Marsh 148, *F.*)

(9)—*Civ. Pro. Code*, 1859, *s.* 97—*Withdrawal of suit—Fresh suit on same cause of action—Jurisdiction of Court.*—A Civil Court has no power to sanction the bringing of a fresh *suit* except under s. 97 of Act VIII of 1859. Under this section, the plaintiff is bound to satisfy the Court before final judgment, that there were sufficient grounds for permitting him to withdraw from the suit with liberty to bring a fresh suit for the same matter. ARGOON SINGH v. HUREE HUR SINGH MONDAH, **14 W.R. 472.**

(10)—*Civ. Pro. Code, Act* X *of* 1877, *s.* 373—*Withdrawal by co-plaintiff from suit—Consent of co-plaintiffs.*—Under the proviso in the third clause of s. 373, Civ. Pro. Code, one of

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several co-plaintiffs may withdraw unconditionally from a suit, even though his co-plaintiffs do not consent to his withdrawal. MOHAMAYA CHOWDHRAIN v. DURGA CHURN SHAHA, **9 C.L.R. 332.** [*Diss.*, 3 Ind. Cas. 61.]

(11)—*Withdrawal of suit with leave to bring fresh suit on payment of costs of defendant—Suit by one of several members of a joint family—Order of withdrawal, if binding upon other members—Costs, deposit of, how and when may be made—Costs deposited not with, but sometime after, the presentation of plaint, if proper.* An order made by a Court, in a suit brought by one of several members of a joint family for recovery of money due on a promissory note, permitting the plaintiff to withdraw from the suit with leave to bring a fresh suit subject to limitation and on condition that he must pay or deposit the defendant's costs before bringing a fresh suit, is not binding upon the other members of the joint family who were not parties to the suit, and a subsequent and fresh suit brought by the previous plaintiff and the other members of the family cannot, so far as the latter are concerned, be dismissed on the failure of the former to deposit or pay into Court the costs as ordered, but must be tried out so far as they are concerned and in the presence of the other plaintiff, whom they are entitled to ask to be joined as a party-defendant to the suit. Where no question of limitation arises, the subsequent suit may be taken to have been duly instituted, as regards all the plaintiffs, on the day on which the costs were deposited. (32 C. 339, *R.*) The deposit of costs on a day subsequent to the presentation of the plaint may be treated as a sufficient compliance with the order made in the previous suit. GOPI LAL v. LALA NAGAN LAL, **14 C.L.J. 105.** (31 C. 965, *R.*; 10 C.W.N. 8, *Expl. & D.*)

(12)—*Withdrawal of suit—Withdrawal with consent of defendant—Civ. Pro. Code,* 1859, s. 97—*Right to bring fresh suit.*—A plaintiff filed a plaint for an account to be taken. The plaintiff withdrew the plaint, without the permission of the Court to withdraw from the suit, with liberty to bring a fresh suit. This was done for the purpose of a submission to arbitration under a deed mutually executed between the plaintiff and defendant. The deed was not acted upon. *Held*, reversing the decision of Macpherson, J., that the plaintiff was not debarred by s. 97 of Act VIII of 1859 from bringing a fresh suit to establish the agreement for reference to arbitration, and also for the account, which was a relief to which he was entitled. The section only applied to cases where the plaintiff withdraws from the suit without the consent of the defendant. JUGGOBUNDO CHATTERJEE v. WATSON AND CO., **Bourke A.O.C. 162 = Bourke O.C. 250.**

(13)—*Suit for partition by co-sharer—Alienees of other co-sharers made parties to the suit—Subsequent suit by an alienee—Maintainability of suit—Leave to withdraw suit with liberty to file a fresh suit.*—One of several Mahomedan co-sharers brought a suit for a general partition of property, in which they impleaded the alienees of some of the other co-sharers as defendants. It was held, in that suit, that it was unnecessary to inquire into the rights of the alienees, and that they should be directed to a separate suit for their remedy. Afterwards, one of the alienees brought a suit for a share in the specific property sold to him, making the co-sharers parties to the suit, but not impleading the other alienees. It was *held* (1) that the suit was not maintainable in the form in which it was brought, and, (2) that the plaintiff may be allowed permission to withdraw the suit, with permission to file a fresh suit, for the same subject-matter of the litigation. PIR MIAN NURALH WD. PIR ARSHAD SHAH v. MUSSUMAT ARBAB KHATU, **1 Sind L.R. 187.** (11 B. H. C. 72, 77, 23 B. 385, *F.*).

(14)—*Withdrawal of suit with permission—Issues.*—A plaintiff cannot be permitted to withdraw with liberty to bring a fresh suit, after issues have been joined, and he has failed to produce evidence to support his claim. MUDDUN RAMDOSS v. ISRAIL ALI CHOWDHRY, **21 W.R. 291.** [*R.*, 33 B. 722 = 11 Bom. L.R. 1109.]

(15)—*Suit withdrawn with liberty to sue afresh — Appellate Court, competency of, to question order.*—Where a suit instituted in a first Court is withdrawn with liberty to sue afresh, and a fresh suit is instituted which is decreed, and the defendant prefers an appeal, it is not competent to the Appellate Court to question the propriety of the order reserving to plaintiff permission to sue again. *In the matter of* OMESH CHUNDER MUNDAL v. THAKOOR DOSS MOOKERJEE, **23 W.R. 345.**

(16)—*Civ. Pro. Code (Act* VIII *of* 1859), s. 97—*Withdrawal from suit—Fresh suit—Discretion of first Court—Interference by Appellate Court.*—Where a Court of first instance, in the exercise of its discretion under s. 97 of Act VIII of 1859, allows a plaintiff, at any time before final judgment, to withdraw from the suit with liberty to sue afresh, the Lower Appellate Court has no jurisdiction to interfere. RAN KANYE DUTT v. HAROO CHUNDER MOJOOMDAR, **17 W.R. 229.**

(17)—*Enlargement of period for delivery of award—Discretion of Court— Provisions in judgment affecting rights of parties under award—Deviation by Court without jurisdiction vitiating award—Permission to bring fresh suit, Court not competent by judgment to reserve.*—Under s. 318 of Act VIII of 1859, the Court may, in its discretion, enlarge the period for the delivery of the award without the consent of the parties and even if they oppose the enlargement, there being no provision in the section that enlargements shall be granted only by consent. In this case, whereas the last enlargement of time for delivery of the award was to the 10th of December, it was not

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actually delivered till the 12th; though this was an irregularity, the arbitrator had given notice to the Court, on the 10th, that the award was ready on that day, giving good reasons for not delivering it and the award was in fact delivered on the 12th and received by the Court as of the 10th and the irregularity therefore was not such as to vitiate the proceedings so as to render the award a nullity. Where Court had introduced into its judgment certain provisions materially varying and affecting the rights of the parties as they had been declared in the award, the judgment was deemed to have been passed not in accordance with the award and to be consequently one without jurisdiction. The Court had also introduced into its judgment permission to the parties to sue again, and this was held not only as beyond the jurisdiction of the Court and contrary to the express provisionsof ss. 322 and 325 of the Code, but also as having been passed on an entire misconception of the circumstances under which the law empowers the Courts to permit a plaintiff to bring a second suit for the same matter. The permission in the present instance, the Court purported to give under s. 97 of Act VIII of 1859. But the High Court *held* that that section could have no possible application, since it applies only to the case of a plaintiff, who, *at any time before final judgment*, satisfies the Court that there are sufficient grounds for permitting him to *withdraw from the suit* with liberty to bring a fresh suit for the same matter. ANUND MOHUN PAUL CHOWDHRY v. RAM KISHEN PAUL CHOWDHRY, **2 W.R. 297.** [*R.*. 8 W.R. 171, 18 A. 422, F.B.=16 A.W.N. 137.]

(18)—*Act* VIII *of* 1859, *s.* 97—*Permission to bring fresh suit.*—No permission to bring a fresh suit can be given under s. 97, Act VIII of 1859, where final judgment has been pronounced. RAJAH SHEORAJ NUNDUN SINGH v. RAJCOOMAR BABOO DEO NUNDUN SINGH, **24 W.R. 23.**

(19)—*Application for permission to withdraw suit with liberty to bring fresh suit—Withdrawal allowed, but permission to bring fresh suit refused.*—Where the appellants made an application to the appellate Court to be allowed to withdraw the suit and to be permitted to bring it afresh, *held* that the lower Court was not competent, while refusing permission to bring the suit afresh, to order that the appeal should be struck off the file according to the first part of the prayer. The application if it could not be granted in its entirety, should have been refused, and the appeal should have been disposed of in the usual manner. NAGPAL v. CHINTAMAN, **A.W.N. 1882, 69.**

(20)—*Act* VIII *of* 1859, *s.* 97—*Withdrawal of suit—Permission—Power of Court.*—On a day being fixed for the hearing of the case, the plaintiff petitioned the Court saying that it would be out of his power to adduce the evidence which he pointed out as existing in certain records, within the period fixed by the Court for hearing the case, and he, therefore, asked the Court for permission to withdraw his plaint. *Held* that the Court was competent under s. 97 of the Code to grant the permission asked for. KOOMAR PORESH NARAIN ROY v. RANEE SURUF SOONDUREE DEBEE, **16 W.R. 100.**

(21)—*Civ. Pro. Code, Act* VIII *of* 1859, *s.* 97—*Compromise on withdrawal of special appeal—Bar of suit found on such compromise.*—A suit founded on a compromise which had been entered into when a special appeal was withdrawn, is not barred by s. 97, Act VIII of 1859, as it is not a suit for the same matter within the meaning of that section, but, if the compromise had been duly made by the parties thereto and its terms had been broken, a party to it would be entitled to maintain a suit to enforce it. GOLAB SINGH v. CHEDA SINGH, **3 Agra 135.**

(22)—*Withdrawal of suit—Right of plaintiff to withdraw from or abandon his suit without the consent of the Court — Compromise.* — The plaintiff in a civil suit has an absolute right to withdraw from or abandon his suit either in whole or in part without the consent of the Court. Where both parties to a suit notified to the Court that they were agreed on the subject of litigation and did not wish to continue the suit but did not inform the Court of the nature of the compromise arrived at:—*held* that such notification was to be treated as a withdrawal or abandonment of the suit within the meaning of s. 373 of the Code of Civil Procedure. ALLAH BAKSH v. NIAMAT ALI, **A.W.N. 1892, 53.**

(23)—*Unconditional withdrawal of claim—Private agreement—Defendant's failure to fulfil—Setting aside withdrawal—New right of action.*—Where a plaintiff in person filed a petition purporting to request the withdrawal of his claim unconditionally, his suit should at once be struck off the file. If the defendant had privately entered into some agreement and refused to fulfil the agreement, the circumstance might give the plaintiff a new right of action for the enforcement of the agreement, but was no valid reason for setting aside the petition of withdrawal as null and void. RAJAH SHUMSHER BAHADOOR v. MIRZA MAHOMED ALI BEG, **2 Agra 158.**

(24)—*Subsequent suit for rent, withdrawal of, effect of, on prior decree.*—The withdrawal of a subsequent suit by a landlord against his tenant for rent could not have the effect, in any way, of neutralising a previous decree for rent with respect to the same lands. Nor could it put an end to the relationship of landlord and tenant which was established by the earlier decree. RUNGO LALL MUNDUL v. ABDUL GUFFOOR, **4 C. 314=3 C.L.R. 119.**

(25)—*Suit for rent — Subsequent suit for possession*—Res judicata—*Act* VIII *of* 1859, s. 97.—There is nothing in s. 97, Act VIII of 1859, to prevent a suit or from instituting a

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claim for possession, and afterwards bringing one for rent. RAM KISHORE MUNDLE v. MOORAD MUNDLE, **W.R. Act X, Rul. 67.**

(26)—Res judicata—*Former suit dismissed for failure to produce evidence, with reservation to bring a new suit—Fresh suit—Act* VIII *of* 1859, *s.* 2.—A suit brought in the year 1856, to set aside an auction sale of a *Putnee Taluk* for arrears of rent, under Ben. Reg. VIII of 1819, was dismissed for want of evidence on the part of the plaintiffs, with a reservation by the Court that the order made was not to be a bar to the plaintiffs, or any other persons who might substantiate their rights, from proceeding to recover. On a fresh suit by the same parties for the same matter, *held* that such reservation was of no effect as, under s. 2 of Act VIII of 1859, the former suit was a bar, and a plea of *res judicata* allowed. There is no power in the Courts in *India*, similar to that exercised by Courts of Equity or Common Law in *England*, to dismiss a suit with liberty for the plaintiff to bring a fresh suit for the same matter, or to enter a non-suit. Such power of the Indian Courts is limited to questions of form, as (1) in the case of misjoinder of parties or of the matters in suit, (2) where a material document has been rejected for not bearing a proper stamp, and (3) if there has been an improper valuation of the subject-matter of the suit; but not to a case where the issue has been joined and the plaintiff fails to produce the evidence he is bound to give to support the issue. WATSON v. THE COLLECTOR OF JILLA RAJSHAHYE, **3 B.L.R.P.C. 48 = 13 M.I.A. 160 = 12 W.R.P.C. 43 = 2 Suther 269 = 2 Sar. 500.** [*F.*, 21 W.R. 291, 12 M. 500, 35 C. 924 = 12 C.W.N. 921; *R.*, 3 A. 528, 9 A. 155, 9 A. 690, 14 B. 31, 19 B. 571, 9 C.W.N. 679, 6 Bom. L.R. 594, 29 B. 219 = 7 Bom. L.R. 90, 29 A. 471 = 4 A.L.J. 375, 18 M.L.J. 198, 11 Bom. L.R. 1109; *Cons.* 8 A. 282; *Observed on*, 16 W.R. 276; *D.*, 23 W.R. 315, 3 C.L.R. 447.]

(27)—*Withdrawal of suit by plaintiff with permission to sue afresh—Subsequent suit on same cause of action*—Res judicata—*Civ. Pro. Code*, 1882, *ss.* 13, 373—Where a plaintiff withdraws from the suit under s. 373, Civ. Pro. Code, 1882, with liberty to sue afresh, before nothing is decided in respect of the merits of the case, and institutes a fresh suit on the same cause of action, the second suit would not be barred by the rule of *res judicata*. ABDUL RAHMAN v. LAL BEHARI, **A.W.N. 1885, 151.**

(28)—*Withdrawal of suit—Petition may be re-called before final order*—Res judicata—*Judgment between defendants*—Res judicata *between defendants—Evidence, admissibility of—Deposition—Opportunity of cross-examination—Evidence Act* (I *of* 1872), *s.* 33—*Hindu widow—Reversioner.*—A plaintiff, who has filed an unconditional petition to withdraw the suit, is entitled to recall the petition and proceed with the suit at any time before the final order is passed. Where there was no judgment defining the real rights and obligations of the defendants *inter se*, the principle of *res judicata*, could have no application. (11 B. 216, 31 C. 95, 5 C.L.J. 611, 36 C. 193, 1 Ind. Cas. 913, 5 C.L.J. 653, *Rel.*)— A deposition is necessarily a partial representation of facts as to all persons who have no opportunity to bring out the whole truth by cross-examination. Such deposition ought not to be used against the party to his prejudice. *Semble*: The principle of the rule of the English Law of Evidence by which, when there are several remainders limited by one deed, a judgment for or against one of them is evidence for or against the next in succession, may justify the use, under s. 33 of the Indian Evidence Act, of a deposition in a suit brought against a Hindu widow, in a subsequent litigation against her reversioner. RAJ KUMARI DEBI v. NRITYA KALI DEBI, **7 Ind. Cas. 892 = 12 C.L.J. 434.** (23 W.R. 42 at p. 43, 15 B.L.R. 5, *Appr.*)

(29)—*Withdrawal of suit for attached property—Subsequent attachment and sale—Right of fresh suit—Civ. Pro. Code* (*Act* VIII *of* 1859), *s.* 97 *and Act* (X *of* 1877), *s.* 373.—Where, after an adverse order on a claim petition to attached property under s. 246 of the Civ. Pro. Code (of 1859), a regular suit for the property was withdrawn and the property was released from attachment, a subsequent regular suit for the same property, after its fresh attachment and sale in execution of the same decree, is not barred under s. 97 of the Code, where there is nothing to show that the judgment-debtor was a party to the previous action. MUKHODA SOONDURY DASI v. RAMCHURN KARMOKAR, **8 C. 871.**

(30)—*Civ. Pro. Code, Act* VIII *of* 1859, *s.* 97—*Withdrawal of suit prior to Act of* 1859—*No permission obtained—Subsequent suit, maintainability of.*—As the Regulation law in force before Act VIII of 1859 came into force did not require permission to withdraw a suit, the plaintiff who withdrew a suit while the old Regulation was in force could bring a fresh suit in respect of the same matter after the Code of 1859 came into force, though he had not obtained leave of the Court for the withdrawal. VINAYAK JOSHI v. JANARDAN JOSHI, **7 B.H.C.A.C. 23.**

(31)—*Suit on minor's behalf—Withdrawal by next friend, effect of—Fraudulent withdrawal of suit by next friend—Courses open to minor—Civ. Pro. Code*, 1859, *s.* 97.—Where a suit is lawfully brought by a party, who has a right to bring it on behalf of a minor, any withdrawal of the suit by that party has precisely the same effect as the withdrawal of a suit by a person of full age. [*R.*, 19 B. 571.] But where a minor's next friend fraudulently withdraws the suit, without obtaining leave to bring a fresh suit, thereby imposing on the minor a statutory prohibition from bringing a fresh suit, the minor plaintiff might relieve himself from the consequences of the fraud in one of three ways:—(1) by an application to the Court in the suit in which the withdrawal

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took place, (2) by a regular suit to set aside the judgment founded upon the withdrawal or (3) by bringing a fresh suit for the same cause, and setting up the fraud as an answer to the statutory bar. ESHAN CHUNDRA SAFOOI v. NUNDAMONI DASSEE, **10 C. 357.** [*Cited*, 21 C. 605 ; *Expl.*, 13 B. 137 ; *Cons.*, 22 C. 8 ; *R.*, 10 B. 338, 10 M. 272, 12 M. 503, 15 B. 594, 26 C. 891=3 C.W.N. 670, 3 C.L.J. 119, 37 P.R. 1903.]

(32)—*Suit for damages for breach of contract —Arrest, under* s. 477, *Civ. Pro. Code* (1882), *of defendant before judgment—Summons not served on defendant—Application for withdrawal of suit under* s. 873, *Civ. Pro. Code* (1882)—*Objection by defendant—Procedure—Compensation to defendant under* s. 491, *Civ. Pro. Code*, 1882, *for illegal arrest.*—In a suit for damages for breach of contract, the defendant was arrested before judgment under s. 477 of the Civ. Pro. Code (1882), although no summons had been served on him previously and he was discharged by the Court. At the hearing of the case, plaintiff applied under s. 373 to withdraw the suit with liberty to sue afresh. The defendant objected. On behalf of the plaintiff it was argued that the defendant had no right to appear at the hearing of the case, by reason of the non-service of summons on him. The Court held (1) that the defendant had the right to appear in spite of the non-service of summons on him because the plaintiff had brought him before the Court by a legal process, and (2) that, under s. 373 of the Civ. Pro. Code (1882), the plaintiff might withdraw the suit with liberty to sue afresh. In the above case, the Court awarded compensation to the defendant under s. 491 for his illegal arrest under s. 477, Civ. Pro. Code (1882). H. H. SYED ALI v. A. ADIB, **15 B. 160.**

(33)—*Act* VIII *of* 1859, *ss.* 97, 114—*Costs—Suit, withdrawal from.*—The Court in this case refused an application by the plaintiff, under s. 97, Act VIII of 1859, to be allowed to withdraw from the suit with liberty to bring a fresh suit for the same matter. But, on another application for leave simply to withdraw from the suit, it granted the application dismissing the suit with costs. HOSSANI BIBI v. PERI KHANUM, **1 B.L.R. O.C. 45.** (1 M.H.C. 247, *Diss.*)

(34)—*Act* VIII *of* 1859, *s.* 97—*Withdrawal of suit—Mode of recording order—Costs.*—Under s. 97, Act VIII of 1859, the Court which permits the withdrawal may do so "on such terms as to costs or otherwise as it may deem proper." The Court is not justified in interfering in appeal with an order that a plaintiff, who is permitted to withdraw from his suit under s. 97, Act VIII of 1859, should pay the defendant's costs. When a suit is by permission withdrawn under s. 29, the proper order to be recorded is not one of *dismissal*, but a simple order in the terms of that section, permitting the plaintiff "to withdraw from the suit with liberty to bring a fresh suit for the same matter," on payment of costs or otherwise as the Court may deem proper. T. R. DOUCETT v. J. P. WISE, **1 W. R. 322.** [*D.*, 9 W.R. 309.]

(35)—*Withdrawal of suit—Payment of costs not made condition precedent to fresh suit—Power to stay suit.*—A, having brought an action against B, was allowed to withdraw, with leave to bring a fresh suit, and was also ordered to pay the costs. *Held* that, the payment of the costs not having in terms been made a condition precedent to bringing a fresh suit, the Court had no power to stay proceedings in the fresh suit, on the ground that the costs had not been paid. CHITTO v. MUZZUR HOSSAIN, **2 Hyde 212.**

(36)—*Withdrawal of suit against one defendant—Powers of Small Cause Court—Costs.*—A SmallCause Court is not bound to allow a plaintiff to withdraw a suit on the ground that he had received payment from one of the defendants in the suit, that attempt to withdraw having been made after the plaintiff had succeeded in getting a judgment against the defendants, which had been set aside by the Court on various grounds and a new trial ordered. In such a case, the withdrawal of the suit may be permitted by the Court upon the terms of the plaintiff paying the cost of the other defendant. RAMACHANDRA SHASTRY v. PAPU AIYAN, **3 M.H.C. 27.**

(37)—*Appeal — Withdrawal.*—An appellate Court has authority to allow an appeal to be withdrawn. RAM PERSHAD OJHA v. BHUROSA KOONWAR, **9 W.R. 328.**

(38)—*Withdrawal of suit—Civ. Pro. Code*, 1859, *s.* 97—*Exercise by Appellate Court of powers under* s. 37, *Act* XXIII *of* 1861.—Where application was made for leave to withdraw a suit, with leave to bring a fresh one, it being contended that the fact of a notorial protest on inland bills, and of their being in the hands of the holder without signature, was proof of dishonour, and further that, defendant being a Hindu, there was no necessity for notice of dishonour,—the Appellate Court, reversing the decision of the Court below, granted the application under the power given by s. 37, Act XXIII of 1861. BOMBAY CITY BANK v. MOONJEE HURRYDOSS, **Bourke A. O.C. 99.**

(39)—*Suit for separate possession—Decree passed for joint possession—Validity of decree—Remedy of decree-holder—Fresh suit—Civ. Pro. Code* (*Act* VIII *of* 1859), *s.* 97.—Where, after ascertaining the nature of a suit and after the issues had been laid down on the supposition that the suit was one for separate possession, the Lower Appellate Court gave the plaintiff a decree for joint possession without any change whatever being anywhere recorded or in any way made in the issues, the High Court interfered and set aside the decree for joint possession and granted permission to the plaintiff, under s. 97 of Act VIII of 1859, to bring a fresh suit for joint possession. JUGGURNATH DEB NAZIR v. MOHEBOOLLAH, **17 W.R. 164.**

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(40)—*Civ. Pro. Code, Act* VIII *of* 1859, *s.* 97, *applicability of*—*Withdrawal of claim by plaintiff*—*Revocation of withdrawal, effect of.*—A plaintiff is at liberty to rescind the act of withdrawal from a suit at any time before final judgment. The last clause of s. 97, Civ. Pro. Code, contemplates cases in which the withdrawal is not revoked. RAMBHUROS LALL v. GOPEE BEEBEE, **6 N.W.P. 66.** (2 Agra 158, *D.*) [*F.*, 12 C.L.J. 434=7 Ind. Cas. 892.]

(41)—*Withdrawal of suit*—*Possession*—*Suit for resumption*—*Maintainability*—*Mal-Lakhiraj*—*Burden of proof.*—A suit for resumption of certain land as invalid *lakheraj* is not barred simply because the plaintiff withdrew from a former suit for possession of the same land. Plaintiff sued for land as *mal.* He added in his plaint that the defendant would set up an invalid title of a *lakheraj* tenure. The defendant really did plead a sunnud. *Held* that, under such circumstances, the legal rule as to the burden of proof cannot be altered. The plaintiff who asserts that the land is his *mal* must prove that affirmation before the defendant can be legally bound to set up any title at all. ISSUR CHANDER SHAHA v. SARODA SOONDAREE DEBIA, **3 W. R. Act X, Rul. 18.**

(42)—*Petition for withdrawal setting out terms of agreement concerning immoveable property*—*Registration*—*Registration Act* III *of* 1877, *s.* 17.—Where a petition for withdrawal of a suit upon which the Court ordered the suit to be struck off sets out the terms of an agreement entered into by the parties creating right in immoveable property to the value of over Rs. 100, such an agreement if unregistered is invalid, and a suit based upon it is unsustainable. MUTHAYYA v. VENKATARATNAM, **25 M. 553.** [*Expl.*, 7 C.L.J. 492=35 C. 837=12 C.W.N. 849; *R.*, 5 C.L.J. 611=36 C. 193; *D.*, 27 P.R. 1906=11 P.L.R. 1906.]

See ACT IV OF 1869, 9 B.L.R. App. 6.

Revisional powers of Special Judge—*See* BOMBAY ACT XVII OF 1879, s. 54, 12 B. 684.

See PUNJAB ACT XVI OF 1887, ss. 5 (1), (*c*) and 110 (1), 144 P.L.R. 1904.

See APPEAL—DECREES AND EXECUTION OF DECREES, 8 A. 82.

See APPEAL—ORDERS, 6 A. 211=A.W.N. 1884, 28.

See AWARD, 7 C.W.N. 186.

Suit instituted in High Court by leave—Withdrawal of suit with liberty to bring fresh suit—Subsequent refusal of leave for institution of fresh suit—Discretion of Court—*See* CIV. PRO. CODE, 1908, ss. 16, 18, 20, O. XXIII, r. 1, 24 M. 293.

Frame of suit—Suit for land—Omission to claim mesne profits accrued due before date of suit—Subsequent suit for those profits—Whether barred by s 43, Civ. Pro. Code—*See* CIV. PRO. CODE, 1908, O. II, rr. 1, 2, 4, 5, 3 L.B.R. 56.

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See CIV. PRO. CODE, 1908, O. II, r. 2, 14 C.P.L.R. 104.

See CIV. PRO. CODE. 1908, O. II, r. 2, O. XXIII, r. 1. 5 A. 406, F. B.=A.W.N. 1883, 92.

Suit barred by limitation—Right to withdraw suit with liberty to bring fresh suit—*See* CIV. PRO. CODE, 1908, O. XXI, rr. 97 to 99, O. XXIII, r. 1, 7 M.L.T. 223=6 Ind. Cas. 285.

Without liberty to bring fresh suit—High Court—Power to award costs—*See* COSTS—SPECIAL CASES, 1 M.H.C. 247.

See COSTS—SPECIAL CASES, 5 N.W.P. 116.

See GUARDIAN—DUTIES AND POWERS OF GUARDIAN, 15 W.R.P.C. 19=6 B.L.R. 190.

Exclusion of time of former proceedings—Defect of jurisdiction—*See* LIMITATION ACT, 1908, s. 14, 12 B. 625.

See MULTIFARIOUSNESS, 2 B.L.R.A.C. 341 =11 W.R. 273.

Or appeals—Withdrawal of suit—Landlord and tenant—Forfeiture for non-payment of rent—Right to relief on application in motion—*See* PRACTICE AND PROCEDURE, Cor. 67.

Suit to enforce right of pre-emption—Withdrawal from suit of one of the pre-emptors—Effect—*See* PRE-EMPTION—GENERAL, A.W.N. 1885, 189.

See RES JUDICATA—GENERAL, 1 O.C. 97.

See RES JUDICATA—AJUDICATIONS, 16 W.R. 276.

Application for—With permission to bring a fresh suit—Effect upon subsequent suit when application refused and suit dismissed—*See* RES JUDICATA—CAUSE OF ACTION, 8 O.C. 389.

See SMALL CAUSE COURT, PRESIDENCY TOWNS, JURISDICTION OF—GENERAL, 29 C. 239.

See SPECIAL OR SECOND APPEAL—RIGHT OF SPECIAL APPEAL, 6 W.R. Act X, Rul. 24.

Suit referred to arbitration—With liberty to bring fresh suit—Subsequent suit for same matter, maintainability of —*See* SPECIFIC RELIEF ACT, 1877, s. 21, 9 A. 168=A.W.N. 1887, 13.

Reference to arbitration—Withdrawal of suit before award with liberty to bring a fresh suit —*See* SPECIFIC RELIEF ACT, 1877, s. 21, 1 A. L.J. 257.

Witness.

1.—GENERAL.
2.—COMPETENCY TO BE WITNESS.
3.—DEFAULTING WITNESSES.
4.—EXAMINATION OF WITNESSES.
5.—EXPENSES OF WITNESSES.
6.—PRIVILEGES OF WITNESSES.

Witness—continued.

7.—SUMMONS TO AND ATTENDANCE OF WITNESSES.

8.—WEIGHT TO BE ATTACHED TO EVIDENCE.

9.—MISCELLANEOUS.

——1.—General.

(1)—*Burden of proof—Non-examination of parties in a suit, result of—English and Indian practice—Account books, non-production of.*—The plaintiff brought a suit for the recovery of certain properties, alleging that he was adopted twenty years before the date of the suit. *Held*, the burden of proving that the alleged adoption took place twenty years before the trial rested upon the plaintiff. The presumption that would be drawn in England will be to the detriment of a plaintiff who fails to enter the witness-box and face the ordeal of cross-examination. But, in cases between natives tried in India, a species of advocacy is tolerated by the Courts of law here, in which the unworthy effort of the advocate on each side is to force his opponent to produce his own client, in order that he himself may have the opportunity of cross-examining that client. The result is that, should the opponent refuse to be led into this trap, the parties (the principal witnesses, who possibly could throw light on all these tangled transactions which so perplex those who have to decide these cases) are never examined at all, and the litigation goes forward through tortuous windings to its unsatisfactory and uncertain end. It is a vicious practice, unworthy of a high toned or reputable system of advocacy, tending to embarrass and perplex judicial investigation, and too often enabling fraud, falsehood or chicane to baffle justice. Having regard to the well-known and often proved habits of the Indian people with regard to the keeping of accounts, recording their most minute transactions, the non-production of any book, in which anything connected with the matter in question is entered, by the party in whose possession it is, covers the parties' case with suspicion. MUSSAMAT LAL KUNVAR v. CHIRANJI LAL, **7 M.L.T. 57=14 C.W.N. 285=11 C L J. 172=12 Bom. L R. 244=32 A. 140=20 M.L.J. 182=5 Ind. Cas. 549, P.C. =37 I.A. 1.**

(2)—*Suit to recover money on bond—Refusal of defendant to enter witness-box.*—A sued to recover from B Rupees 10,000 on a bond which he alleged B had executed to him when he lent him the money. B denied having received the money or executed the bond, and contended that his alleged signature was a forgery. C, B's brother, also asserted that the endorsement which purported to have been written by him was forged. *Held*, that the evidence adduced by B was most unsatisfactory, while the refusal of B and C to enter the witness-box, to deny that they had acted as alleged by A, weighed strongly against the probability of their story. RUGHOOBUR DUTT CHOWDHURY v. FUTTEH NARAIN CHOWDHURY, **7 M.J. 311.**

Witness—continued.

——1.—General—*continued.*

(3)—*Attesting witness—Mortgage—Evidence Act* (I *of* 1872), *s.* 68—*Transfer of Property Act*, (IV *of* 1882), *s.* 59—*Writer of the deed.*—A person who is present and witnesses the execution of a (mortgage-deed and whose name appears on the document, though he is therein described merely as the writer of the deed, is a competent witness to prove the execution of the deed. He need not be described in the deed as an attesting witness. RAJ NARAIN GHOSH v. ABDUR RAHIM, **5 C.W.N. 454.** (20 A. 532, *R.*)

(4)—*Witness writing name of executant—Attesting witness—Attestation, meaning of—Transfer of Property Act*—1882, *s.* 59—*Proof of mortgage—Bond—Remand.*—A witness who says that he saw the executant of a mortgage-bond put her finger mark upon it and that he wrote her name at her request, may properly be regarded as an attesting witness, and the words "by the pen of" preceding his name, written by himself, should be treated as a mere matter of surplusage, as the document was executed by the lady herself and not by him on her behalf. (5 C.W.N. 454, *F.*) Attestation means that what is said to be attested happened in the presence of the attesting witness. (9 L.R.Q.B.D. 139, *F.*) [*F.*, 31 M. 215=18 M.L.J. 219=3 M.L.T. 300, 36 C. 861=4 C.L.J. 41.] Where an objection was taken at a late stage that a mortgage-bond was not attested, as the law required, by two witnesses, the suit, instead of being dismissed, was remanded to the lower Court to give the plaintiff an opportunity of adducing evidence to show that at least two witnesses whose names appeared on the face of the document were attesting witnesses. DINAMOYEE DEBI v. BON BEHARI KAPUR, **7 C.W.N. 160.**

(5)—*Examination of infant.*—The Court will not issue a commission for the examination of an infant of tender years. *In the matter of* SEENODEENY DOSSEE, **2 Hyde 152 = Cor. 73.**

(6) — *Defendant summoned as witness for plaintiff— Failure of defendant to appear—Court directing* ex parte *proceedings against defendant — Illegal procedure — Objectionable practice.*—The plaintiff having required the defendant to appear as his witness, the Court directed him to appear accordingly. On the date fixed for his appearance, his pleader represented to the Court that he (defendant) was ill. The case was adjourned to another date for the defendant's appearance. On that date again, he failed to appear on the ground of illness, but his pleader was present. The Court ordered the case to proceed *ex parte* against him: *Held*, that there is no law which warranted the Court's order, merely on the ground of failure of the defendant to appear under the circumstances of the case. The defendant, being present by his pleader, was entitled to have his defence heard. The practice of the plaintiff summoning the defendant as his witness and *vice versa* is objectionable, and ought not to be countenanced by the Court on any account. BALDEV TRIBUVANDAS GUJARAT. v. BALDEVDAS DWARKADAS, **3 Ind. Cas 45.**

Witness—continued.

——1.—General—*continued.*

(7)—*S.* 156, *Act* XIV *of* 1882, *Civ. Pro. Code*, —*Refusal to examine witnesses tendered—Substantial error in procedure—Discretion exercised wrongfully—Appeal.*—The omission to examine witnesses tendered is a material defect in procedure and as such it can be considered as a good ground for special appeal. Where, on the day of hearing, an application for an adjournment for attendance to witnesses, who though summoned yet failed to attend, was refused and the case was proceeded with, and the Court, recorded that the case was closed and that on the following day it would deliver judgment, *held*, that the refusal to examine the witnesses tendered on the following day was a substantial error in procedure and that the Court having exercised its discretion wrongfully, the order refusing to examine the witnesses was appealable. *Per Ghose, J.—Quære.*—Whether a Court on second appeal could interfere on a point of discretion. MONILAL BANDOPADHYA v KHIRODA DASI, **20 C. 740**. [*F.*, 8 C.L.J. 147=12 C.W.N. 312; *R.*, 9 C.L.J. 367=13 C.W.N. 493.]

(8)—*Witness proving hostile — Permission to cross-examine—Refusal by Court.*—Where one's own witness unexpectedly makes statements adverse to his interest, it is common fairness that the Judge should permit such statements to be tested by cross-examination if the evidence is to be relied upon and if cross-examination be disallowed, the evidence is of no value. [*N.B.*—In this case, the appellate Courts questioned the credibility of witnesses relied upon by the Court of first instance and upset the findings of fact of such Court upon the evidence on record. KALAGURLA SURYANARAYANA v. YARLAGADDA NAIDOO, **6 C.W.N. 513, P.C.**

(9)—*Deposition of witness--Description at heading—Whether part of evidence.*—The description of a witness in the heading of a deposition is no part of the evidence given by the witness. MAQBULAN v. AHMAD HUSAIN, **26 A. 108, P. C.=8 C.W.N. 241=6 Bom. L.R. 233=31 I. A. 38=8 Sar. 583.**

(10)—*Arrest in execution of decree—Privilege of witness—Scope of privilege.*—The privilege of a witness of freedom from being arrested in execution of a decree during his attendance at Court for the purpose of giving evidence in the case in which he had been subpœned is not given by the law for the personal benefit of the individual affected, but for the furtherance of the public interests and for the better administration of justice, and the legal definition of the circumstances under which it is claimable, *viz.*, *eundo, morando et redeundo*, is in itself sufficient to show what really is the scope of the privilege. Where the circumstances of the case show that the witness, in visiting the Court, had not a *bona fide* belief that he was wanted for the purpose of giving evidence in the case in which he had been summoned, he is not entitled to the privilege. WOOMA

Witness—continued.

——1.—General—*continued.*

CHURN DHOLE v. G. TELI, **14 B. L. R. App. 13.** [*D.*, 1 C. 78, 5 C. 106, 6 A.L.J. 912=32 A. 3=3 Ind. Cas. 46.]

Suit for dissolution of marrriage—Respondent, if competent witness—*See* ACT IV OF 1869, s. 52, 3 B.L.R. App. 6.

See ACT X OF 1873, s. 8, 31 P.R. 1888.

Professional misconduct—Payment to witness to speak the truth or to prevent false evidence—*See* ACT XVIII OF 1879, ss. 13, 14, 5 C.W.N. 45.

Failing to attend in obedience to summons —Adjournment of case—*See* ADJOURNMENT, 2 L.B.R. 91.

Process-fees for summoning witnesses—*See* ADJOURNMENT, A.W.N. 1886, 220.

See ADMISSION—ADMISSIONS IN PLEADINGS, 9 W.R. 83.

See AMEEN, 1 B.L.R.S.N. 1 (*b*).

Credibility of—*See* APPELLATE COURT—DUTY OF APPELLATE COURT, 1 Hyde 105.

See ARREST, 4 M.H.C. 145.

Application for issue of Commission to examine female—Sufficiency of grounds set forth in affidavit in support of—*See* CIV. PRO. CODE, 1908, s. 132, 14 B. 584.

Supplemental written statement to be filed before hearing—Admissibility as evidence for affecting credit of—*See* CIV. PRO. CODE, 1908, O. VIII, r. 1, 4 B. 576.

Dismissal of suit—Plaintiff's pleader present but none of the plaintiff's witnesses—*See* CIV. PRO. CODE, 1908, O. IX, rr. 8, 9, A.W.N. 1893, 25.

Summoning and attendance of witnesses—*See* CIV. PRO. CODE, 1908, O. XVI, r. 1, s. 33, O. XX, r. 1, 61 P.R. 1904.

Examination of witnesses—Burden of proof on defendant—Defendant deliberately closing his case without examining a witness whom both sides had summoned—Defendant applying after close of case for leave to examine such witness—Application to be refused—*See* CIV. PRO. CODE, 1908, O. XVI, r. 7, O. XVIII, r. 4, 4 N.L.R. 129.

Witness required by Court but not wanted by party—Procedure—*See* CIV. PRO. CODE, 1908, O. XVI, r. 14, 159 P.L.R. 1911.

Adjournment for attendance of witnesses—Discretion of Court—*See* CIV. PRO. CODE, 1908, O. XVII, r. 1, A.W.N. 1882, 127.

Order for parties to appear with, at adjourned hearing—Default of plaintiff's witnesses — Procedure — *See* CIV. PRO. CODE, 1908, O. XVII, r. 3, O. XLI, r. 27. 8 A.L.J. 839.

Evidence on commission of, in foreign territory—*See* CIV. PRO. CODE, 1908, O. XXVI, rr. 5, 17, 30 C. 934=7 C.W.N. 806.

Witness—continued.

——1.—General—*continued.*

Hypothecation bond — Forged attestation, effect of—*See* CONTRACT—ALTERATION OF CONTRACTS, 15 M. 70.

Attestation of—After execution of bond—Material alteration — Validity of bond—*See* CONTRACT—ALTERATION OF CONTRACTS, 15 B. 44.

Addition of attesting witness — Not a material alteration—*See* CONTRACTS—ALTERATION OF CONTRACTS, 1 M.L.J. 388.

Alteration of document — Addition of—To document not requiring attestation, effect of—*See* CONTRACT — ALTERATION OF CONTRACTS, 12 C. 313.

See CONTRACTS—ALTERATION OF CONTRACTS, 7 B. 418.

Examination of—Costs—*See* COSTS—SPECIAL CASES, 14 C 219.

Suit by—To recover costs—Maintainability of —*See* COSTS—SPECIAL CASES, 8 C.W.N. 178.

Plunder of property—Credibility of witnesses —*See* DAMAGES— MEASURE AND ASSESSMENT, 3 B.L.R. P.C. 44=12 W.R.P.C. 38.

Accused using defamatory language to complainant while in witness box—Words not uttered in good faith—No privilege—*See* DEFAMATION, 2 M.L.J. 142=15 M. 414.

Parties and witnesses, distinction between statements made by—*See* DEFAMATION, 5 C. W.N. 293.

Evidence of Judge's opinion of credit of, found in previous case—Admissibility—*See* EVIDENCE — MISCELLANEOUS, 4 C.W.N. 684.

Adjournment of case to enable plaintiff to summon—Witness, non-attendance of, on date fixed for his examination—Evidence—Plaintiff, failure of, to produce his evidence in time—*See* EVIDENCE ACT, 1872, s. 115, 4 O.C. 408.

Deposition given as—Whether an acknowledgment in writing—*See* LIMITATION ACT, 1908, s. 19, 16 M. 220=3 M L.J. 35.

Attesting witness—*See* MORTGAGE — GENERAL, 5 C.W.N. 454.

Evidence—Oath — Conscientious objections to take oath on Bible by member of Church of England—Admissibility of evidence not given on such oath—*See* OATH, 2 M.H C. 246.

Civ. Pro. Code, Act VIII of 1859, s. 39—Script to refresh memory of—Necessity for being filed with plaint—*See* PRACTICE AND PROCEDURE, 1 M.H.C. 168.

Opinion of witness as to market value of property—Evidence—Evidence Act, s. 45—*See* PRE-EMPTION—GENERAL, 4 O.C. 247.

Proclamation of sale, objection by judgment-debtor to contents of, after sale—Witness, re-summoning of—*See* SALE—SALE IN EXECUTION OF DECREE—MISCELLANEOUS, 4 O. C. 379.

Witness—continued.

——1.—General—*concluded.*

Judges who have not seen and heard witnesses cannot refuse to adopt conclusions of those who have so seen and heard—*See* WILL —GENERAL, 11 Bom. L.R. 1206, P.C.=10 C. L.J. 276=6 M.L.T. 304=32 M. 400=3 Ind. Cas. 799=19 M.L.J. 640.

Will—Whether can affix his mark in attestation—*See* WILL—ATTESTATION, 3 B. 382.

——2.—Competency to be witness.

(1)—*Husband or wife, competency of, to give evidence for or against each other in civil proceedings.*—In this case the principal Sudder Ameen had held that the evidence of a material witness, the husband of the vendor, was inadmissible inasmuch as the interests of the husband and his wife were identical. The High Court *held* that he should not have refused to consider the evidence, and remanded the case referring him to the provision in s. 20, Act II of 1855, that, in every civil proceeding, a husband or wife is competent to give evidence for or against each other. SULEEMOOLLAH v. SUBEER, **4 W.R. 83.**

(2)—*District Munsif—Judicial officer, whether can be summoned to give evidence of what took place before him as such judicial officer.*—A District Munsif ought not to be called on to depose as to what took place before him in the course of a trial which he was conducting as Munsif, and he is entitled to exemption. PROCEEDINGS, 27TH NOVEMBER 1871, **6 M.H.C. App. 42.**

(3)—*Magistrate — Witness — Magistrate who held a preliminary enquiry could be summoned to give evidence.*—Magistrates are not incapacitated to give evidence of matters which have come before them in the course of a preliminary enquiry into a criminal charge. In a suit for malicious prosecution, the defendant has a right to the evidence of a Subordinate Magistrate who held a preliminary enquiry into the charge preferred by the defendant against the plaintiff. RAMASAMI AYYAR v. RAMU MUPAN, **3 M.H.C. 372.** [*R*, 6 M.H.C. xlii.]

(4)—*Attorney and advocate, if competent witness.*—An attorney who acted as an advocate for a party, and who has pleaded such party's case can be examined as a witness in the case. RAMFAL SHAW v. BISWANATH MANDAL, **5 B.L.R. App. 28.**

——3.—Defaulting Witnesses.

(1)—*Witnesses summoned— Non-appearance —Procedure—Civ. Pro. Code*, 1859, *s.* 168.—Where witnesses who have been summoned do not appear, it is for the party to move the Court, and not for the Court to look after the witnesses of the parties. But irrespective of this s. 168 of the Civ. Pro. Code provides that the Court may issue attachment, if it be shown that the witness has been absconding or keeping out of the way so that he cannot be

Witness—continued.

——3.—**Defaulting Witnesses**—*continued.*

apprehended and brought to Court. MR. J. G. BACHMAN v. LALL BEHAREE PANDEY, **13 W.R. 324.** [*R.*, 8 A.L.J. 839=10 Ind. Cas. 903.]

(2)—*Non-appearance of witnesses after summons—Party's duty to move Court to secure their attendance—Witness—Premature application to compel attendance — Commission for examination of witnesses, Court whether bound to await return.*—Where witnesses summoned at the instance of a party failed to attend on the day fixed, it is the duty of the party who requires their evidence and not of the Court, to move the Court for further measures to be taken to secure their attendance. It is premature to apply to the Court to compel the attendance of witnesses before the result of the service of summons is known. A Court is not bound to await the return of a Commission issued for the examination of witnesses, unless it is moved to wait therefor. NUND MOHAN CHOWDHRY v. GOLUCK NATH NEOGEE, **11 W.R. 99.**

(3)—*Absent witness when Court bound to issue proclamation against—Suit by purchaser of jote, compromise come to by zemindar not binding on lessee defendant.*—A Court is not bound to issue proclamation against witnesses who have failed to attend in obedience to a summons, where it is not satisfied that the witnesses were material witnesses and that they have really absconded for the purpose of avoiding attendance. The appellant purchased certain rights of one G who held a tenure under the zemindar. The zemindar gave a lease of it to B, and the appellant sued all these three parties. After the remand of the case for trying whether the rights of G were transferable, the zemindar filed a compromise, but the lower appellate Court still tried the case of the appellant as against B who was in actual possession through the zemindar. The contentions on special appeal that the compromise by the zemindar entitled the appellant to obtain a decree and that B the other ryot was bound by the acts of his zemindar, the landlord, were *held* by the High Court to be untenable. The zemindar having given a lease to B cannot bind him by any act prejudicial to his rights. So, the mere fact that the zemindar had withdrawn from the contest could not by itself preclude B from contesting the special appellant's purchase. BHOOBUN MOYEE DOSSEE v. KISHOREE DOSSEE, **6 W.R. 235.**

(4)—*Failure of witnesses to attend on summons—Application for arrest—Non-payment of expenses— Legal excuse for non-attendance—Civ. Pro. Code, ss.* 174, 160.—On an application being made to a Court for the issue of a warrant to arrest certain witnesses that had failed to attend in obedience to a summons, the Court has, under the provisions of s. 174 of the Civ. Pro. Code, discretionary power as to granting or refusing the request, except when

Witness—continued.

——3.—**Defaulting Witnesses**—*continued.*

the Court has reason to believe that the defaulting witnesses had a lawful excuse for their failure to attend, in which case it is precluded from issuing an order for arrest. Under the explanation attached to s. 174 of the Code, non-payment or non-tender of a sum sufficient to defray the expenses mentioned in s. 160, *viz.*, the travelling or other expenses of the person summoned in passing to and from the Court for one day's attendance, shall be deemed a lawful excuse for his non-attendance in obedience to the summons, and, in such a case, the Court has no option but to refuse the warrant of arrest applied for. TODAR MAL v. SAID MUHAMMAD, **17 A. 277=A.W.N. 1895, 74.**

(5)—*Procedure—Witnesses—Service of summons — Warrant — Attachment of property.*—After the issue of summonses on the witnesses without any effect, the appellant, with the permission of the Court, took out warrants for their arrest. But they were all returned with a report that the witnesses could not be found. The next day after the return, the appellant asked the Court that their property might be attached. The Court refused the request and decided the case on that very day against the appellant. *Held* that the proceedings refusing the request were illegal. Under the law, the Court should inquire whether the witnesses were material witnesses and, if they were material, should comply with the request. SHEIKH JAFUR v. GOOROO PERSHAD DOSS POTEDAR, **3 W.R. 97.**

(6)—*Civ. Pro. Code, s* 168—*When warrant of arrest may be issued to a witness not appearing after summons.*—S. 168, Civ. Pro. Code, requires that there should appear to the Court to be satisfactory ground for believing that the default on the part of witnesses summoned to give evidence is without lawful excuse, before issuing a warrant for the arrest of such witnesses. But it is necessary for this purpose to institute a formal investigation and come to a determination on the evidence adduced. PERIYANNA CHETTY v. GOVINDA GOUNDAN, **5 M.H.C. 104.** [*R.*, 5 Ind. Cas. 184=11 C.L.J. 29.]

(7)—*Act* VIII *of* 1859, s. 159—*Witness—Application to enforce attendance made at very late stage.*—Where a simple petition to enforce the provisions of s. 159 of the Civ. Pro. Code 1859, was put in when the arguments were commenced and at a very late stage of the case, without proffer of any proof that the witness was absconding or keeping out of the way for the purpose of avoiding the service of summons, the lower appellate Court was justified in not postponing the case at that last stage, and was quite right in proceeding to trial, although that witness was very material. AJOODHYA DOSS v. BIBEE MISRUN, **15 W.R. 176.**

(8)—*Civ. Pro. Code (Act* VIII *of* 1859), *ss.* 159, 168—*Application under—Absconding of witness—Evidence—Duty of Court.*—On an

Witness—continued.

——**3.—Defaulting Witnesses**—*continued.*

application being made to the Court under ss. 159 and 168 of the Civ. Pro. Code. (Act VIII of 1859), the Court is bound to satisfy itself that the witness has absconded or cannot be brought before it, and that his evidence on the document in question, as the case may be, is material to the case. On being so satisfied, it ought not to refuse the application, except where the applicant has disentitled himself to the assistance of the Court, either by reason of his having aided in or connived at the absconding of the witness, or of having otherwise placed himself in such a position that it would be inequitable to grant it. RAJOO SINGH v. LALLA BALGOBIND LAL, **1 W R. 25.**

(9)—*Civ. Pro. Code,* 1882, *s.* 174—*Witness attending on summons but refusing to produce document not punishable under — Scope of section—Punishment for refusal to produce document, provided by the s.* 175, *I.P.C.—Crim. Pro. Code, s.* 480.—The provisions of s. 174 of the Civ. Pro. Code of 1882 apply only to the case of a witness who, not having attended on summons, has been arrested and brought before the Court. It does not apply to a case where the witness, having attended on summons to produce a document, refuses to produce the document or falsely states on oath that it is not in his possession. The case of a witness who, having a document, will not produce it, is provided for by s. 175 of the Penal Code, and a limited summary jurisdiction is given to the Court in such a case by s. 480 of the Civ. Pro. Code (Act X of 1882), and where a witness denies, on oath, that he has the possession or means of producing a particular document, he can, if he has been guilty of falsehood, be prosecuted for giving false evidence in a judicial proceeding. *In re* PREMCHAND DOWLATRAM, **12 B. 63.**

(10)—*Civ. Pro. Code, s.* 159—*Recusant witnesses—Discretion of Court in issuing proclamation, to be exercised reasonably.*—S. 159 of the Civ. Pro. Code, gives the Civil Court a discretion as to the issuing of proclamation and subsequent orders for attachment; but, such Court is bound to exercise a reasonable discretion. In the present case, there was no reasonable exercise of such discretion; on the contrary, it was opposed to facts, patent on the record; and the High Court, considering the reasonings of the Judge altogether invalid, remanded the case in order that the usual legal proceedings may first be taken to procure the attendance of the missing witnesses, and for a fresh decision by the first Court after recording their evidence. The High Court directed that, in case the witnesses be not found, the Judge should decide the case *de novo* on the evidence really before him and not an unjustifiable assumptions. PORAN CHANDER GHOSE v. DOPEENATH SINGH, **8 W.R. 505.**

(11)—*Civ. Pro. Code, ss.* 159, 160, 365—*Fine for avoiding summons—Right of appeal—Jurisdiction—Act* XIX *of* 1853, *s.* 28—*Act* X *of* 1861.—The provisions of s. 28, Act XIX of 1853, have been repealed by Act X of 1861. A Judge has no jurisdiction under Act VIII of 1859 to inflict a fine for the purpose of punishing a witness who absconds or keeps out of the way, to avoid service of summons. The Legislature must have intended by the words of s. 365, Act VIII of 1859, to give the right of appeal to the High Court to a person aggrieved by an order of Civil Court imposing a fine on him as a punishment for keeping out of the way in order to avoid service of summons to attend as a witness, whether the order be strictly referable to s. 160 or not. GAJADHAR PRASAD v. NARAYAN SINGH, **1 B.L.R.A.C. 186=10 W.R. 233.**

(12) — *Plaintiff summoned as witness by defendant—Non-appearance of plaintiff— Dismissal of suit.*—In the absence of any petition by the defendant for attachment or other legal process to be made by the Court to compel plaintiff to appear, it is not obligatory on the Court to dismiss the case merely on account of the non-appearance of the plaintiff summoned by the defendant to attend as witness. BUSHTEE NARAIN ROY v. SHAM SOONDUR NUNDEE, **2 W.R. Act X. Rul. 42.**

(13)—*Suit by person of rank for setting aside sale deed—Person of rank charging defendant with conspiracy and forgery—Evidence to be given by plaintiff—Neglect to appear on ground of rank—Effect.*—A person of rank, suing to set aside a sale deed on the ground that it was never executed by him and that it was a forged deed, should first appear in Court and give his evidence, especially as the matter is within his own knowledge. If parties will not come forward and give their own evidence, in cases in which such evidence is most important and the best that can be obtained, they must not complain if their written statement verified by their mooktear and not by themselves, and supported by the evidence of menials and a class of witnesses of whom any number can be obtained to prove any fact that is wanted, is not believed. The Court will require the best evidence to be given and will not be satisfied with the evidence of inferior witnesses put forward by the parties themselves while they remain in the background and plead their prejudices as an excuse for their absence. RAMMOHUN MOOKERJEE v. RAJAH NURSING DEB, **W.R. F.B. 54.**

——**4.—Examination of Witnesses.**

(1)—*Party, right of, to have all witnesses heard by Court.*—Every party to a suit is entitled to have *all* the witnesses whom he desires to call, and is ready at the trial to produce, heard by the Court, whatever opinion the Court may form by anticipation as to the probable value of the evidence when it shall be given. LOOLOO SINGH v. RAJENDUR LAHA, **8 W.R. 364.** [*R.*, 6 L.B.R. 17.]

Witness—continued.

——4.—**Examination of Witnesses**—*contd.*

(2)—*Evidence—Party's right to adduce—Act X of 1889, s. 38.*—A plaintiff is not barred, even by reason of expressed intention to the contrary, from adducing any relevant evidence as long as his case is not closed. [*Appr.*, 13 W.R. 108; *D.*, 10 W.R. 204.] S. 38 relates to the filing of documents, and not to collateral evidence. BUNGSHEE LALL v. CHOWDHRY MAMOMED BUKSH, **1 W.R. 263.**

(3)—*Party to suit—Examination of witnesses.*—A party to a suit is not bound to go into the enemy's camp and examine witnesses who come therefrom. PUNCHANUN ROY v. TROYLUCKHO MOHINEE DOSSEE, **14 W.R. 466.**

(4)—*Examination of witnesses — Duty of parties.*—It is the duty of the plaintiff or the defendant, as the case may be, to tender such witnesses as he considers necessary to prove his case, and to see that they are examined, notwithstanding the report of the Nazir that such and such witnesses are in attendance. If he fails to do so the Court cannot postpone the case in order to have the witnesses named by the parties examined. DEEN DYAL SINGH v. DANEE ROY, **13 W.R. 185.**

(5)—*Witnesses, selection of, for examination—Duty of parties and not of Court.*—It is not the business of the Court to determine what witnesses shall be examined; the parties must select their own witnesses and call upon the Court to examine such of them as they may offer for examination. If they do not take the necessary steps to have the witnesses examined or to compel them to be present for examination at the proper time, it is their own fault and not that of the Court. MORNO MOYEE DEBEE v. BHEEM COOMAR CHOWDHRY, **6 W.R. 231.** [*F.*, 4 N.L.R. 129.]

(6)—*Application for attendance and examination of witness, duty of Court to look into purpose of—Consent to abide by testimony of particular witness, limited to direct evidence legally admissible.*—In this case, the lower appellate Court summoned, at the instance of the plaintiff, one of the defendants in the suit and, having examined him, found that he supported *in toto* the defendants' evidence below and reversed the judgment of the first Court which had found in favour of the plaintiff. On second appeal, it was contended that the judgment of the Appellate Court was wrong, because all that the defendant deposed to as a witness was spoken from hearsay, whereas the appellant should be taken to have meant only to agree to abide by such testimony as would be legally admissible, or in other words, only the evidence given by the defendant relating to such facts as he was able to directly speak to. The High Court also observed that, as the law sufficiently provides for the compulsory attendance of the parties to the suit, as well as other persons, for the purpose of giving evidence, such an application to the Court, as that made by the plaintiff, was not necessary for the purpose of procuring the witness, and could have no meaning unless it impliedly gave up some of the strict rights of a litigant and amounted, in some sort, to a submission, to arbitration. Before granting such an application the Court should take care that its purpose is plainly that of compromise and submission; otherwise it runs the unnecessary risk of lending the process of the Court to the prosecution of a wager of law. LUCKEE MONEE DOSSEE v. SHUNKURREE DOSSEE, **2 W.R. 252.**

(7)—*Witness in attendance, duty of Court to examine.*—In this case, the first Court had stopped the case after hearing some alone of the witnesses, saying that it was satisfied, but the lower appellate Court, not being satisfied by the evidence on the record, decided without hearing all the evidence. A review presented by the appellant to the Judge was rejected on the ground that it seldom happens that some witnesses are not sent away unexamined and that such a pretext would re-open almost every case. The High Court did not agree with the Judge, observing that it may well be that it often happens that many witnesses named do not appear, or, appearing, are not examined by the parties who named them; but it is not common and it certainly is not proper for the Court to eject any witnesses in attendance whom the parties wish to call. Where, in such a case, the first Court has rejected some of the witnesses actually in attendance, taking upon itself the responsibility of not having examined them, the appellant can claim to be heard out before any decision is passed against him by the appellate Court. MESSRS. R. WATSON AND CO. v. MUKEE MUNDUL, **6 W.R. Act X, Rul. 83.**

(8)—*Evidence — Examination of witnesses—Duty of Judge.*—It is the duty of the Judge to see that the evidence of the witnesses actually before him is properly taken and thoroughly sifted. NOWBUT RAM BHUKUT v. SHUKLEE DAYEE, **5 W.R. 34.**

(9)—*Witnesses—Examination—Court's duty.*—The Court is bound to examine all witnesses whom the parties wish to be examined, except where there is a clear intention to obstruct or delay justice. CHOWDHRY KHOORGO ROY v. SHIB TOHOL ROY, **17 W.R. 172.**

(10)—*Day fixed by Court for hearing, duty of Court to wait for—Court not competent to decide the case earlier without witnesses.*—The Judicial Commissioner who tried this case was *held* to have acted illegally in having disposed of it before the day appointed for hearing the witnesses of the plaintiff, on the ground that he was not likely to believe them. The High Court remarked that it was very surprising that the Judicial Commissioner should have set forth the doctrine that it was right to decide without waiting for the witnesses, because no amount of witnesses would be believed. Although there may be very good grounds for refusing to

Witness —continued.

——4.—Examination of Witnesses—*contd.*

adjourn the case beyond a day once fixed, yet, after a day has once been appointed for the purpose of hearing the evidence in the case, to decide without waiting for that day, in the absence of the witnesses, is thoroughly illegal. RANEE OOJULLA KOOMAREE DHUJAMONEE DEBIA v. GHOLAM MOSTAFA KHAN, **6 W.R. 60.**

(11)—*Issues—Evidence—Written statement—Admission.*—Under the Civ. Pro. Code, 1859, it is the duty of the Court to examine the written statements in order to see on what points the parties are at issue, to lay down the issues, and to receive and consider the evidence adduced on the points in dispute, but the Court will not allow the parties to waste its time by producing evidence to establish that which has never been contradicted ; and therefore to lay down that, when a defendant admits any one fact contained in the written statement of the plaintiff, and thereby excludes independent evidence thereof, he is entitled to say that the plaintiff has relied on his statement as evidence, and that he (defendant) is in consequence in a position to claim that the whole of it may be read as evidence in his own favour, is a proposition which cannot be maintained. If a party wishes to give evidence in his own favour, of course it is in his power to come forward like any other witness, and subject himself to examination and cross-examination in open Court ; but until he has subjected himself to cross-exmination, no statement which he may volunteer can be used as any evidence in support of his own case, unless the right, so to use it, has accrued from the deliberate act of his adversary. A party cannot himself determine that his own statement shall be used as evidence in his favour. SHAIKH SHURFURAZ MOLLAH v. SHAIKH DHUNOO, **16 W.R. 257.**

(12)—*Deposition given by defendant in particular form proposed by plaintiff—Court not competent to re open case and examine further witnesses.*—The plaintiff had rested her claim on the evidence of the defendant, and the defendant, having been examined, did not prove the claim of the plaintiff but swore to the falsity of it. The first Court therefore dismissed the suit. On appeal, the Judge was of opinion that, as the plaintiff had rested her case on the deposition of the defendant, which was to be taken by placing his hand on a particular text of the Koran, and he was not examined in that form, but under Act V of 1840, the plaintiff was entitled to have her remaining witnesses examined. *Held* that as it was clearly the plaintiff's intention to rest her case entirely on the evidence of the defendant, his examination being taken by administering the oath on the Koran or in any way the Court might deem proper, the first Court was right in having examined the defendant in the way and manner sanctioned by the Procedure Code and the defendant was equally bound to speak the truth whether examined under Act V or on the

Witness—continued.

——4.—Examination of Witnesses—*contd.*

Koran. Plaintiff had repeatedly petitioned the Court to examine the defendant resting her case on his evidence alone and asking the Court not to examine the remaining witnesses. Under the circumstances, the lower appellate Court should not have determined that the plaintiff might examine further witnesses and re-open the case. MAHOMED SALEH v. MUSSAMUT MURIAMOONISSA, **10 W.R. 284.** [*D.*, 13 W. R. 108.]

(13)—*Jurisdiction—Transfer of case—Judge—Powers—Procedure.*—A Judge has no power whatever to keep a case on his own file and refer the witnesses to be examined, some by the Munsif and some by the Subordinate Judge, and then to decide it himself. The Judge could have transferred the case either to the Munsif or the Subordinate Jugde with the sanction of the High Court, under the provisions of s. 27, Act VI of 1871. GUJENDRO CHUNDER SANDYAL v. WOOMA MOYEE DEBIA, **16 W.R. 176.**

(14)—*Examination of parties and witnesses—Powers of Munsif—Act* VIII *of* 1859, *ss.* 166, 170.—A Munsif has power if necessary under s. 166, Act VIII of 1859, to examine any of the parties to a suit and to compel their attendance; or, in the event of their failure to comply with the order, to deal with the suit under s. 170. He also has power, if necessary, to examine any other person as a witness. The general duties of the lower Courts in connection with the examination of witnesses pointed out. RAMGATI v. SRIMATI INUTARI BANU, **1 B.L. R.S.N. 20 C.**

(15)—*Application on special grounds to take evidence of witness—Duty of Court.*—A Court is not necessarily bound to take the deposition of a witness merely because he has been summoned and is present. It is clearly the duty and privilege of the parties to call such witnesses as they think necessary to support their cases respectively. When any material witness is not examined, it is the duty of the party who deems his testimony of importance to call upon the Court at the proper time to examine him. If the Court, when specially prayed to take the evidence of a witness, refuses without good reason to do so, then, no doubt, the party calling the witness would have ground for complaint. But the Court is in no degree bound to examine a person as a witness merely because he has been summoned and is in attendance. SREEMUTTY RANEE DOORGA SOONDAREE v. RANEE HUREE MONEE, **2 W.R. 166.**

(16)—*Refusal by Appellate Court to summon witnesses not examined in first Court.*—An Appellate Court is not wrong in not summoning witnesses who were present in the Court of first instance, where it is not shown that the first Court was either asked to hear them or refused to hear them. CHUNDER NATH SEIN v. ANUNDMOYEE DOSSEE, **11 W. R. 289.**

Witness—continued.

——4.—**Examination of Witnesses**—*contd.*

(17)—*Appeal—Examination of plaintiff—Decision.*—Where the defendant asked the lower appellate Court to summon and examine the plaintiff as a witness in the case, but subsequently applied to the Court not to examine him, *held* that the Judge was not wrong in examining the plaintiff, but should not have decided the case solely with reference to the plaintiff's evidence, instead of, as he ought to have done, with reference to that evidence coupled with the other evidence in the case. JUGDEO SINGH v. SHAIKH MOLAZIM HOSSEIN, **13 W.R. 108.**

(18)—*Evidence—Statement by defendant to rest his case on evidence of specified witnesses—Court not bound to act upon their evidence.*—Where a defendant stated his readiness to rest his case on the evidence of two witnesses whom he named, and those witnesses, when called, gave testimony unfavourable to the defendant, the Court was not bound to adopt or act upon their evidence and treat that testimony as conclusive, although it was inconclusive and chiefly hearsay. MUNNOO SINGH v. AMRUT LAL, **5 W.R. 234.**

(19)—*Witnesses, omission to examine.*— A Court of first instance, after examining some of the witnesses for the plaintiff, allowed the rest to depart, holding their examination to be unnecessary. Subsequently, during the examination of the witnesses for the defendant, the plaintiff after stating that all his witnesses had not been examined, objected to the examination of more of the defendant's witnesses, than the number examined on his own side, whereupon the Court allowed some of the witnesses for the defendant then present to leave the Court without examining them. *Held* that the lower Court's judgment was defective in not having examined all the witnesses tendered by the plaintiff. GOPEE OJHA v. HUR GOBIND SINGH, **12 W.R. 229.** (2 M.I.A. 424=6 W.R. P.C. 46, *F.*) [*R.*, 6 L.B.R. 17.]

(20)—*Omission to examine material witnesses—Objection in special appeal.*—As a general rule, all the witnesses brought forward by a party ought to be examined. But when an objection is raised before the High Court in special appeal that the Judge below had omitted to examine certain witnesses, it ought to be shown that the evidence of those witnesses would have been material to the case. NILKANTH SURMAH v. SOOSELA DEBIA, **6 W.R. 324.**

(21)—*Refusal to examine.*—In a suit for possession of zemindari and other estates claimed by plaintiff, as son and heir of the deceased zemindar the defendants denied the title of the plaintiff, alleging, that he was a spurious and supposititious child, and tendered fifty-eight witnesses to prove that fact; the Zillah Court having taken the depositions of thirty of these witnesses, refused to permit the remaining twenty-eight to be examined, stating that it was unnecessary to take their depositions, and, ultimately, decided in favour of the plaintiff; the

Witness—continued.

——4.—**Examination of Witnesses**—*contd.*

defendants appealed to the Sudder Court, which refused to examine the witnesses rejected by the Zillah and affirmed the decree of that Court. On appeal to Her Majesty in Council, the Judicial Committee remitted the case back to the Sudder Court, being of opinion that the refusal by that Court to admit the examination of the witnesses tendered was irregular, and that no decision could be come to upon the merits under such circumstances. JESWUNT SINGJEE v JAISSINGJEE, **2 M.I.A. 424=6 W.R. P.C. 46=1 Suther. 150=1 Sar. 213.**

(22)—*Witness, examination of—Discretion of Court.*—Even if a witness has not been named in the list of witnesses of a party, that will be no good ground for refusing to examine such witness when produced. It is quite in the discretion of a Court of first instance, after a plaintiff's case is closed, to allow him to call further witnesses; and there is no right of special appeal upon that point. RAKHAL DOSS MUNDUL v. CROTAB CHUNDER HAZRAH, **12 W.R. 455.**

(23)—*Witness—Civil cases—Recall of witness—Witness for plaintiff recalled for defendant—Leave of Court.*—When a witness has been examined on behalf of the plaintiff he cannot be recalled as a witness for the defendant without leave obtained at the end of the first examination. MACKINTOSH v. NOBIAMONEY DOSSEE, **2 Ind. Jur. N.S. 160.**

(24)—*Act X of* 1859, s. 13—*Suit for enhancement of rent--Evidence of expert taken in appeal.*—In a suit for arrears of rent for 1273 at an enhanced rate of Rs. 3 a beegah, it was found that rent had been paid at one rupee a beegah. The plaintiff relied upon an agreement alleged to have been executed by defendant in byesakh 1273. The Assistant Collector found that the agreement had not been executed by defendant. On appeal to the Judge, upon the ground that only two of the attesting witnesses had been cited and examined by the Assistant Collector, the Judge called an expert who proved that the signatures of the persons who were cited as attesting witnesses were, in fact, written by the attesting witness who has called, and he affirmed the decision of the Assistant Collector. *Held* that the Judge was wrong in calling for and acting upon the expert evidence. *Held* also that even if the agreement had been proved, the claim for enhancement could not be maintained. As the agreement was entered into after the month of Cheyt and as it did not mention the period for which the rent was to be enhanced, the Court could not infer that it was intended to apply to the rent of 1273. BINDESSUREE DUTT SINGH v. DOMA SINGH, **9 W.R. 88.**

(25)—*Evidence—Cross-examination—Importance and object of, observations on.*—The faculty of interrogating witnesses effectually is one of the highest arts of an advocate that could be acquired only after years of observation and

Witness—continued.

—4.—**Examination of Witnesses**—*contd.*

experience. It is a well-known rule that all witnesses examined in chief or sworn are subject to cross-examination. The essence of cross-examination is, that it is the interrogation by the advocate of one party of a witness called by his adversary with the object either to obtain from such witness admissions favourable to his cause or to discredit him. Cross-examination is the most effective of all means for extracting truth and exposing falsehood. Also, the test for determining whether the depositions of witnesses who were absent, or who have been examined in a former suit, can be received, is, whether the party against whom they are to be used had the opportunity to cross-examine. If he could not have cross-examined, the deposition ought not to be admitted against him. MEER SUJAD ALI KHAN v. LALLA KASHEE-NATH DOSS, **6 W.R. 181.**

(26)—*Evidence—Opportunity not given for cross-examination--Admissibility — Consent.*—Evidence given when a party never had the opportunity either to examine or to cross-examine the witnesses, as the case may be, or to rebut by fresh evidence, is not legally admissible as evidence for or against him, unless he consents that it should be so used. GORACHAND SIRCAR v. RAM NARAIN CHOWDHRY, **9 W.R. 587.** [*F.*, 3 Ind. Cas. 374, F.B.]

(27)—*Witnesses—Cross-examination.*—A person summoned by the Court is liable to be cross-examined by the parties to the suit like any other witness. TARINI CHARAN CHOWDHRY v. SARODA SUNDARI DASI, **3 B.L.R. A. C. 145=11 W. R. 468.**

(28)—*Evidence—Cross-examination of defendant by co-defendant.*—One co-defendant whose interests are separately represented may cross-examine another with a view of discrediting evidence which he has given in favour of the plaintiff. NARASIMMA v. KISTNAMA, **1 M.H. C. 456.**

(29)—*Practice—Act* VIII *of* 1859, *s.* 170—*Cross-examination.*—On the defendant failing to appear without lawful excuse, the Judge may at once pass judgment against him. But if he proceeds to take the evidence of the plaintiff's witnesses, the defendant who has entered appearance is entitled to cross-examine them by his vakil. SHAHZADA PAKAKTAR v. JAKRI-RAM BHAKAT, **2 B.L.R. App. 12.**

(30)—*Civ. Pro. Code, Act* VIII *of* 1859, *s.* 169—*Party tendering himself as witness—Refusal to answer questions put in cross-examination—Liability of party to be dealt with under s.* 169—*"Without lawful excuse," meaning of—Act* XXII *of* 1861, *s.* 21—*Proceeding for contempt—Omission to record statement of offender, Effect of.*—A party to a suit tendering himself as a witness, and declining without lawful excuse to answer questions put in cross-examination, is liable to be dealt with under s. 169, Civ. Pro. Code, "Without lawful excuse" means without such an excuse as would in law justify the

Witness—continued.

—4.—**Examination of Witnesses**—*contd.*

refusal to give evidence. In a proceeding for contempt under s. 21, Act XXIII of 1861, the omission of the Court to record the statement of the offender, along with the finding and sentence, is a defect which is fatal to the conviction of the offender. LEKHRAJ v. PALEE RAM, **1 N.W.P. 241.**

(31)—*Trial by various Deputy Collectors—Re-examination of witnesses.* — Where the Deputy Collector who had tried a case and delivered judgment was different from the Deputy Collector who first tried the case and died without recording the legal judgment, and the second Deputy Collector passed the order without re-examining the witnesses examined by his predecessor, *held*, that the second Deputy Collector was not bound to re-examine the witnesses or to examine additional witnesses unless so requested by the parties. GOUR CHUNDER SEIN v. MANICK RAM, **13 W.R. 76.**

(32)—*Witnesses—Application for re-examination of discharged witnesses—Costs—Admission of liability.*—Five suits were instituted to recover a balance of account from the defendants on the ground that they were all partners of a trading concern, and certain witnesses were examined in four of these suits in which the plaintiff in the fifth suit was not a party; and at the request of this plaintiff, the evidence taken in the other cases was allowed to be used as evidence in his case and the witnesses were discharged. Two days after this, an application was made by the plaintiff in the fifth to re-examine these witnesses in the case instituted by him. *Held* that in the absence of new reasons assigned for their re-examination the Court was justified in refusing to call them again. A Court is justified in disallowing the costs of a party against whom the suit is dismissed, where, by his own admission and conduct, he induced the plaintiff to bring him into the category of defendants. SREENATH ROY v. GOLUCK CHUNDER SEIN, **15 W.R. 348.**

(33)—*Evidence—First Court satisfied with evidence of one witness—Procedure.*—If the Munsiff declaring himself to be satisfied with the evidence of any one witness does not think it necessary to examine any further witness whom the plaintiff adduced, and the lower appellate Court on appeal is not satisfied with the evidence of that witness, it is extremely unfair to the plaintiff to dismiss his whole suit. He must be given an opportunity of examining the other witnesses whom he may think fit to examine. HURISH CHUNDER GHOSE v. GOPAL CHUNDER GHOSE, **20 W. R. 203.** [*R.*, 13 B. 333, 336.]

(34)—*Witnesses not examined by first Court as not required—Appellate Court bound to recall and examine.*—The Subordinate Judge, during the progress of the suit before him, intimated to the parties that, having regard to the view which he took of the evidence called by the plaintiff, he did not think it necessary

Witness—continued.

——4.—**Examination of Witnesses**—*contd.*

to examine all the witnesses called for the defendant. The Judge of the lower appellate Court who was inclined to take a different view of the plaintiff's evidence, proceeded upon the evidence recorded by the first Court and reversed its decree. On second appeal by the defendant, held that, during the first appeal the Court ought to have given the defendant an opportunity of calling the evidence which was not taken by the first Court. The decree of the lower appellate Court was reversed and the case remanded for a re-hearing of the appeal after giving the defendant an opportunity of having the witnesses, whom he proposed to examine, examined either in the Court of first instance or in the appellate Court itself as that Court might deem fit. ARJUN v. SHANKAR, **22 B. 253.**

(35)—*Plea of want of opportunity to adduce evidence, how to be established.*—In order that a party may establish the plea that the Court of first instance gave him no opportunity to adduce evidence in proof of his case, he is bound to show that he produced certain witnesses or other evidence before that Court, and that it rejected the evidence on the ground alleged. BUKSH ALI SOWDAGUR v. JOYANUT KHAN, **11 W.R. 248.** *See also* CHUNDER NATH SEIN v. ANUNDMOYEE DOSSEE, **11 W. R. 289.**

(36)—*Damages—Special appeal—Affidavit—Grounds.*—In a special appeal against a lower appellate Court's refusal to examine witnesses in a suit for damages for assault, an affidavit stating that a verbal request of the vakil to examine the witnesses was refused by the Judge is not sufficient. RAMESSUR BHUTTACHARJEE v. SHIB NARAIN CHUCKERBUTTY, **14 W.R. 419.**

(37)—*Evidence—Examination of witnesses—Mode of taking evidence.*—Observations on the improper manner in which evidence is generally recorded in the Subordinate Courts, on the omission to examine the parties to suits, and on the practice, obtaining among judicial officers, of committing the function of taking evidence to native muharirs. PHUL KUAR v. SURJAN PANDEY, **4 A. 249 = A.W.N. 1882, 40.** [*R.*, 55 L.R. 1891.]

(38)—*Mode of testing credibility—Several witnesses to same facts.*—In examining evidence with a view to test whether several witnesses who bear testimony to the same facts, are worthy of credit, it is important to see whether they give their evidence in the same words, or whether they substantially agree, not, indeed, concurring in all the minute particulars of what passed, but with that agreement in substance, and that variation in unimportant details, which are usually found in witnesses intending to speak the truth, and not tutored to tell a particular story. NANA NARAIN RAO v. HARREE PUNTH BHAO, **Marsh. 436 = 9 M.I A. 96 = 1 Sar. 843.**

(39)—*Contradicting witnesses, evidence as to.*—It is frequently a nice question whether a

Witness—continued.

——4.—**Examination of Witnesses**—*contd.*

particular matter is one upon which a witness may be contradicted by other witnesses. The reason of the rule which restricts the right to do so is, that it is an object of great importance to confine the attention of the Jury as much as possible to specific issues. Without some rule, many collateral questions of fact might be raised in the course of a long trial; and the specific question to be determined may be lost sight of. The rule is well stated in Greenleaf on Evidence, s. 52, as excluding all evidence of facts which are incapable of affording any reasonable presumption or inference as to the principal fact or matter in dispute. According to Pollock, C. B., the test is whether the matter is one which the party proposing to contradict would have been allowed himself to prove in evidence. KAJI GULAM ALI *bin* KASI ISAMIL v. H.H. AGA KHAN, **6 B.H.C. O.C. 93.**

(40)—*Agreement to be bound by evidence of opposite party, effect of, where evidence manifestly untrue—Party summoned as witness by Court — Opponent's right to cross-examine him.*—Where the defendant has not given any substantial evidence in the case, and the statements made by him amount to nothing and are manifestly untrue, those statements would not bind the plaintiff notwithstanding that he had previously agreed to be bound by what the defendant might say. Where a party is summoned by the Court to give evidence, he is not only required to answer the questions put to him by the Court, but the opposite party has also the right to cross-examine him. The statement of any person examined is not admissible as evidence unless the opposite party has had an opportunity of cross-examining such party, and has either done so or declined to do so. GOOROODAS ROY v. GREEDHUR SEIN, **11 W.R. 110.**

(41)—*Commissioner appointed under Civ. Pro. Code, 1859—Report—How far evidence—Close of defendant's case—Supplementing of plaintiff's case—Power of lower Court—Dakhilee and uslee village — Proprietorship — Act IV of 1840, proceeding under—Evidence—Discretion of Court.*—The report of a Civil Ameen appointed as a commissioner, under the Civ. Pro. Code, 1859, is evidence only on the point to which the commission refers; and his report on any other point is no legal evidence in the case. A lower Court has no power to allow a plaintiff to supplement his evidence by sommoning new witness, after his case had been closed and the defendant's case has almost come to a termination. The proprietorship of a *dakhilee* village may remain in the hands of one or two more parties, whereas the proprietorship of an *uslee* village may remain in the hands of different proprietors altogether with separate rights and interests. A Court had a discretion to admit or not to admit in evidence a proceeding under Act IV of 1840. SYUD ABDUL ALI v. MULLICK SUDDEROODEEN AHMED, **14 W. R. 493.**

Witness—continued.

——4.—Examination of Witnesses—*concld.*

(42)—*Evidence taken at* ex parte *hearing.*—Evidence taken in the absence of a defendant at an *ex parte* hearing cannot be used against him on a re-trial. RAM BAKS LAL v. KISHORE MOHAN SHAHA, **3 B.L R.A.C. 273=12 W.R. 130.**

(43)—*Deposition of witnesses—Description of a witness in the heading of a deposition is no part of deposition.*—The description of a witness in the heading of a deposition is no part of the deposition proper, that is, no part of the evidence given by the witness on solemn affirmation. MUSSAMAT MAQBOOLAN v. AHMED HUSSAIN, **6 Bom. L.R. 233.**

See AMEEN, 9 W.R. 83.

Legality of refusal to examine witness present in Court—*See* CIV. PRO. CODE, 1908, O. XVII, r. 1, and O. XVIII, r. 4, 10 C.P.L.R. 92.

——5.—Expenses of Witnesses.

(1)— *Witness — Civil cases — Amount of expenses—Compensation for loss of time.*—Act VIII of 1859 made no provision for compensation to witnesses for loss of time. NAWAB NAZIM OF BENGAL v. PROSONO NARAIN DEB, **2 Hyde 236.**

(2)—*Summoning witnesses—Their right to claim expenses.*—People of rank and wealth, who are residents of places distant from the Court, are entitled to claim their travelling and other expenses suitable to their circumstances when summoned to give evidence as witnesses. CHUNDER SEKHER DEB v. JUDHUB CHUNDER SETT, **19 W.R. 78.**

(3)—*Witness not paid expenses—Duty to give evidence—Application by witnesses for payment of their expenses—Application may subsequently be made.*—Witnesses in civil suits who have not been paid for their expenses may apply to the Court, at any time, to enforce the payment of such expenses. Once sworn, a witness must give his evidence, even though his expenses have not been paid; but he does not cease, on that account, to be under the protection of the Court, which has commanded his attendance. So, where such a witness applies to the Court, after he has given his evidence, for the amount of his travelling charges and expenses, it is the duty of the Court to enforce the payment of such expenses by the party at whose instance he had been summoned. THE LONDON, BOMBAY AND MEDITERRANEAN BANK v. MAHOMED IBRAHIM PARKAR, **4 B. 619.** [*R.*, 28 B. 647=6 Bom L. R. 1025.]

(4)—*Witness—Suit for recovery of expenses—Provision for payment of expenses of witnesses.*—No action for the expenses of a witness will lie. Before a witness is summoned, a sufficient sum for his expenses in going to and from the Court, and for one day's attendance, is to be deposited in Court. If it shall appear that the amount deposited on account of the travelling or other expenses of the witness in

Witness—continued.

——5.—Expenses of Witnesses—*concluded.*

passing to and from the Court is not sufficient the Court may order a further sum to be paid to him on that account, and, if not paid, the Judge may order the amount to be levied or may discharge the witness. If the attendance of the witness is required for more than a day, the Judge may order a further sum to be paid, and, on default, may discharge the witness from further attendance. EDWARD DUBOIS DE SARAN v. HURRISH CHUNDER BISWAS, **5 W.R.S.C.C. Ref. 6.** [*D.*, 17 M.L.J. 143.]

(5)—*Order to put in tulubana—Time for payment.*—Where a Court orders a party to put in the tulubana for witnesses 'in one day,' he is in time if he puts the money in on the day following the order. KHOBHAREE RAM v. SHEO PHUL KALAL, **24 W.R. 122.**

(6)—*Witness—Batta not tendered—Failure of witness to appear—Interference in appeal.*—Where it is not proved that a defaulting witness's expenses were tendered by the party who summoned him, the appellate Court will decline to order that witness's evidence to be taken or itself to take such evidence. ISHEN CHUNDER SEN v. ONATH NATH DEB, **18 W. R. 16.**

—— 6.—Privileges of Witnesses.

(1)—*Privilege of witness under examination—Slander—Right of suit.*—A witness in a Court of justice is absolutely privileged as to anything he may say as a witness having reference to the enquiry on which he is called as a witness. BHIKUMBER SINGH v. BECHARAM SIRCAR, **18 C. 264.** [*F.*, 17 B. 127; *Appl.*, 27 C. 262; *R.*, 15 M. 63. 3 L.B.R. 265. A.W.N. 1907, 235 =4 A.L.J. 605=29 A. 685.]

(2)—*Cause of action—False statement of witness—Suit for damages.*—No action will lie against a witness for making a false statement in the course of a judicial proceeding; the proper remedy is a prosecution for giving false evidence. CHIDAMBRA v. THIRUMANI, **10 M. 87.**

(3)—*Rule as to privilege of witness regarding defamatory statements—Applicable to personal insult—Relevant statements privileged, although malicious and false—Irrelevant statements—proof of absence of malice and of good faith and public good allowable in defence—Defamation—Personal insult—Cause of action—Verbal abuse—Special damage—Witness—Privilege.*—The rule of English law as to privilege or protection of a witness in regard to defamatory statements made in the witness-box is based upon a public policy which is equally applicable to insulting and abusive language used by such witness. [*R.*, 29 A. 685=4 A.L.J. 605 =A.W.N. 1907, 235=6 Cr. L.J. 197.] Plaintiff was a witness in a suit instituted by one S, against the defendant, and concluded his evidence by deposing that there was no ill-feeling between him and the defendant. Thereupon the Court examined the defendant,

Witness—continued.

——6.—Privileges of Witnesses—*concluded.*

who stated that there was enmity between him and the plaintiff, and in explanation thereof used words meaning that the plaintiff's descent was illegitimate. *Held, by Brodhurst, J.*, that, under the circumstances, the statement complained of was made when he was examined as a witness in the Court, and it was absolutely privileged. (*Seaman* v. *Netherclift*, L.R. 2 C. P.D. 53, *R.*) *Per Mahmood, J.* (*contra*). The case was properly remanded by the lower appellate Court for trial on the question whether or not the statement complained of was made by defendant in the course of his deposition, or after it was finished and when he was no longer in the witness-box, and it is only when this is ascertained that a correct decision can be arrived at. [*R.*, 17 B. 127, 26 A. 653, 32 C. 1060=9 C.W.N. 847=2 C.L.J. 396.] Such statements when made in the witness-box are privileged and protected, even though made maliciously and falsely, so long as they are relevant to the inquiry, or have reference to the inquiry in the broadest sense of the phrase. [*R.*, 29 A. 685=4 A.L.J. 605=A.W.N. 1907, 235=6 Cr. L.J. 197.] Even where such statements have no reference to the inquiry, the defendant may prove the absence of malice, and that such statements were made in good faith and for the public good. *N.B.*—Several English and Indian cases discussed elaborately in the judgment. DAWAN SINGH v. MAHIP SINGH, **10 A. 425=A.W.N. 1888, 157.**

(4)—*Suit for possession—Benamee—Opportunity given to displace finding of benamee—Evidence not given.*—In a suit by a zemindar to recover possession from a person who claimed to be a dur-putneedar, where the Court below, which originally heard the case, had found that the dur-putnee lease was not a real transaction, and the defendant, though given an opporunity to give his own evidence and displace that finding if he could, had refused to do so notwithstanding collateral evidence by other witnesses who were called for a different purpose, that finding was upheld. KALEE CHUNDER CHOWDHRY v. RANEE SURUT SOONDUREE DEBIA, **18 W.R. 45.**

See BURDEN OF PROOF — MISCELLANEOUS, 8 W.R. 453.

——7.—Summons to and Attendance of Witnesses.

(1)—*Party to suit—Evidence—Act* VIII *of* 1859, *s.* 162.—The Court before making an order under Act VIII of 1859, s. 162, must be satisfied that the evidence will be material. GOPAL CHUNDER HAZRAH v. MOHESH CHUNDER BANERJEE, **21 W.R. 44.**

(2)—*Civ. Pro. Code, Act* VIII *of* 1859, *s.* 162—*Summoning plaintiff to give evidence—Grounds.*—A party desiring the attendance of a plaintiff, under s. 162, Act VIII of 1859, to give evidence, must satisfy the Court that he

Witness—continued.

——7.—Summons to and Attendance of Witnesses—*continued.*

has sufficient grounds for his application, and the Court must also record the reasons for its being satisfied that his evidence is essential to the defendant's case. BABOO MAKOOND ADIT v. RAJAH SUTTOR GHUN ADIT, **17 W.R. 507.**

(3)—*Civ. Pro. Code, Act* VIII *of* 1859, *s.* 170—*Necessary steps to summon parties as witnesses.*—Where after some of the defendants in a suit had been examined as witnesses, the plaintiff petitioned the Court to have the remaining defendants examined, but without making any special application to the Court, and without showing sufficient grounds to its satisfaction in support of his petition, he was held not to have taken the necessary steps required by law to enforce the attendance of witnesses. RAM TUHUL THAKOOR v. OODIT NARAIN SINGH, **12 W.R. 36.**

(4)—*Witnesses, summoning of, by Court—Jurisdiction.*—A Court has no power to refuse to summon witnesses when expressly requested by a party to do so, or to infer or conjecture that they are not likely to prove the case for which they are called. The only exception to this rule is in cases where the witnesses are required to be summoned in such a manner or in such large numbers as would clearly indicate a vexatious desire of obstructing the course of justice. RAM PHUL PANDEY v. WAHED ALI KHAN, **14 W.R. 66.**

(5)—*Delay in summoning witnesses—Refusal to issue summons--Discretion of Court.*—A Court has no discretion to refuse to issue the summons required by a party upon his witnesses. Where the party delays to give in his list of witnesses, but there is reasonable time for the witnesses to attend on the day of hearing, if differrent peons would go by rail, all additional expenses being paid by the party summoning the witnesses, the Court is bound to issue the summonses. If the witnesses be not able to attend, then the Court might exercise its discretion whether it would take measures to enforce or not. PEAREE MOHUN MOOKERJEE v. MADHUB CHUNDER GHOSAL, **9 W.R. 489.**

(6)—*Witness, examination—Commission—Rights of parties.*—A party to a suit has a legal right to apply to the Court for a summons to witness, or for a commission to examine a witness. The Court should grant the application as a matter of course, without considering whether the applicant can derive any advantage therefrom. HARIDAS BAISAKH v. MIR MOAZAM HOSSEIN, **8 B.L.R. Ap. 16=16 W.R. 447.**

(7)—*Civ. Pro. Code*, 1882, *ss.* 159, 167—*Right of parties to take out summonses—Absence of witnesses at hearing, discretion of Court on, to refuse adjournment.*—Under s. 159 of the Civ. Pro. Code, a party has the right to get summonses issued by the Court for such witnesses as he desires to summon. It is only in cases

Witness—continued.

—7.—**Summons to and Attendance of Witnesses**—*continued.*

where, through delay and want of diligence on the side of the party, his witnesses, not having been served in good time, are not present at the hearing, can the Court exercise its discretion to refuse to adjourn the hearing for their attendance, even though they have been summoned. The provision in s. 167 of the Code is one in favour of the witness and for enforcing diligence on the party; it does not give to the Courts any discretion as to granting or refusing summonses in consideration of their being applied for at a late period. KAGI AHMAD v. KAJI MAHAMMAD, **9 B. 308.** [*R.*, 15 B. 86, 5 N.L.R. 181.]

(8)—*Civ. Pro. Code*, 1882, *s.* 159—*Right of party to summon witnesses.*—According to s. 159 of the Civ. Pro. Code, 1882, a party to a suit is entitled, as of right to summonses to his witnesses at any time before the day fixed for the disposal of the suit. BAIKALE v. ALARAKH PIRBHAI, **15 B. 86.** [*F.*, 13 C.P. L.R. 152; *Appl.*, 16 A. 218.]

(9)—*Procedure— Adjournments— Summons for witnesses—Discretion—Duty of Court to issue summons*—The questions of adjournment and of summoning witnesses are totally distinct matters. If a party applies for summonses to witnesses so late that he cannot bring the witnesses on the day of hearing, it still remains in the discretion of the Court to decide whether or not the case should be adjourned. A Munsif is bound under the Procedure Code to issue summons to witnesses when asked for. ABDOOL KADIR v. SHEIK ABIN MIRDHA, **24 W.R. 290.**

(10)—*Evidence—Duty of Court to examine all witnesses summoned.*—The Court has no power to select five out of the twenty witnesses required to be summoned by the defendant. Unless the object of a party, in summoning a large number of witnesses, clearly appears to be to impede the adjudication of the case, or otherwise obstruct the ends of justice, it is the bounden duty of the Court to receive all the evidence tendered. RAM DHAN MANDAL v. RAJBALLAB, PARAMANICK, **6 B.L.R. App. 10.**

(11)—*Act* VIII *of* 1859, *s.*149—*Right of party to obtain summons for witnesses.*—Under s. 149 of the Civ. Pro. Code, Act VIII of 1859, a party is entitled to obtain summonses for witnesses at any time before the case is tried, although he may not be entitled to ask for a postponement, as of right, to enable him to procure the attendance of his witnesses. GORA CHAND GHOSE v. RAJ KOOMAR DOSS, **5 W. R. 111.** [*F.*, 24 W.R. 290; *R.*, 9 W.R. 489.]

(12)—*Party shown to be a material witness—Existence of other material witnesses, duty of Court to summon party independent of—Act* VIII *of* 1859, *s.* 162.—Where a party is certified to be a material witness knowing the facts of the case, and there is no special reason why he should not be summoned for the purpose of giving evidence, if the Court should refuse to summon him merely because other material witnesses have been relied on, or may be called, it would be improperly exercising the discretion vested in it by s. 162 of Act VIII of 1859. MATUNGUNEE DABEA v. KALEE DABEA, **2 W.R. 4.**

(13)—*Dekhan Agriculturists' Relief Act*, XVII *of* 1879, *ss.* 3, *cl.* (*w*), 12, 74—*Civ. Pro. Code, applicability of—Right of defendant to call witnesses.*—By s. 74 of Act XVII of 1879, the Civ. Pro. Code is only to be applied to suits under the Dekhan Agriculturists' Relief Act, only so far as the Code is consistent with the latter Act. Plaintiff brought a suit under s. 3, cl. (*w*) of Act XVII of 1879, for money due on a bond. The defendant, though duly served with summons, failed to appear on the day fixed for the final disposal of the suit, and the Court thereupon proceeded with the suits *ex parte.* The defendant was, however, summoned and examined as a witness under s. 7 of the Act, and in his deposition he admitted the bond, but alleged part payment in satisfaction of the debt. He then applied to the Court to summon his witnesses to prove his allegation of part payment. *Held* that the Court was bound to summon the witnesses named by the defendant, because, under s. 12 of the Act, the Court is bound to inquire into the merits of the case whenever the amount of the claim is disputed. DULICHAND v. DHONDI, **5 B. 184.**

(14)—*Application to enforce attendance of witness—Duty of Court to pass some definite order—Procedure—Warrant for apprehension of witnesses.*—It is the duty of the Court, when an application is made to the effect that summons has been issued and served upon certain witnesses who have not appeared, and for whose attendance the party making the application asks the Court to take action, to pass some definite order, and not to content itself with an order to the effect that the petition be filed with the record. Courts are not bound, on the mere statement of a party that he has more witnesses, to issue a warrant for their apprehension. NILMONY CHOWDHRY v. HOSSEIN ALLY, **5 W.R. 222.**

(15)—*Witnesses for party, attendance of, duty of Court to enforce—Competency of High Court to interfere.*—In this case, the Judge below had, without the slightest reference to the interests of the parties concerned and to the facts of the case, refused to grant a coercive process to enforce the attendance of witnesses, upon the irrelevant ground that, setting as a Civil Court, he could not punish the witnesses criminally for their non-attendance. On special appeal, the High Court remanded the case observing that the Civil Court is bound in justice to render all reasonable assistance to a party to enforce the attendance of his witnesses, and directing the Judge to give an opportunity to the plaintiff to produce his evidence and try

Witness—continued.

—7.—**Summons to and Attendance of Witnesses**—*continued.*

the case thoroughly. NILMONEE BANERJEE v. SHURBO MUNGOLA DEBEE. **6 W.R. 14.** [*F.*, 11 C.L.J. 29=5 Ind. Cas. 184]

(16)—*Civ. Pro. Code, s. 162—Application to summon party to give evidence—order, finality of.*—S 162, Civ. Pro. Code, does not give the lower Court an absolute power either to allow or to refuse the issue of a summons against a party to appear as a witness. When a Court exercises the power adversely to the petitioner and gives reasonable grounds for its decision, such order would be final. HARA CHAND PORAMANICK v. KRISHTO MOHUN GIREE, **1 W.R. 297.**

(17)—*Recusant witnesses—Judge refusing to compel attendance*—The discretion of a Judge in refusing to compel the attendance of witnesses named by a party is a judicial one and must be exercised on reasonable grounds which should be themselves distinctly stated in the judgment. OZEER MAHOMED v. BYDNATH DOSS CHOWDHRY, **5 W.R. Act X, Rul. 6.**

(18)—*Summons to produce documents and for attendance of witnesses—Refusal, ground of—Civ. Pro. Code (Act X of 1877), s. 137.*—The mere fact of the Court being of opinion that witnesses cannot be present or that document cannot be produced, before the close of the trial cannot be a ground for its refusing to grant an application for compelling their attendance or their production. KRISHNA CHURN BAISACK v. PROTAB CHUNDER SARMA, **7 C. 560** [*Appr.*, 16 A. 218=14 A.W.N. 45; *F.*, 13 C P. L.R. 152.]

(19)—*Suit for arrears of Rent—Kabuliat denied—Petition to summon witnesses to prove kabuliat simply put with the record—Act X of 1859, s. 66—Appeal—Procedure Act VIII of 1859, ss. 356, 357.*—In a suit for arrears of rent based upon a kabuliat alleged to have been executed by the defendant, the latter denied the kabuliat and put in a petition to summon certain witnesses to prove his payments and that he had been paying at a particular rate. The lower Court ordered the petition to be put with the record and tried the case without summoning the witnesses of the defendant. *Held* that the lower Court having ordered the petition to be put with the record was tantamount to making an order refusing to summon the witnesses, and that the lower Court was wrong in not summoning them according to the directions of s. 66, Act X of 1859. In such a case, on appeal by the defendant, the Judge ought, under s. 356, Act VIII of 1859, to have directed the lower Court either to send the witnesses to him for the purpose of being examined, or required the lower Court to take their evidence and to transmit it to him, and according to s. 357, Act VIII of 1859, he ought to have directed that the points to which the evidence was to be confined were, whether the defendant had been paying at the rates mentioned by him and

Witness—continued.

—7.—**Summons to and Attendance of Witnesses**—*continued.*

whether he had made the payments alleged by him and whether the payments made had been specifically appropriated to any particular rent. MOHUN MUNDER v. BRIJ BHOOKUN SINGH, **9 W.R. 127.**

(20)—*Party undertaking himself to bring his witnesses, right of, to subsequently apply for subpœnas—Practice*—The mere circumstance of a party having originally undertaken himself to brings his witnesses to Court for examination is no sufficient reason for depriving him of his right to subsequently apply for and get subpœnas issued, when he finds himself unable to bring them or to detain them till they are examined, although such circumstance may be a reason for the Court not waiting for such witnesses, where the case had been in other respects finished before they could appear. PANDURANG ANPAI v. KESHAVJI, **6 B. 742.**

(21)—*Witnesses—Proclamation—Attachment—Remand.*—Where the plaintiff asked for the issue of proclamations against his witnesses under s. 159, Civ. Pro. Code, and did not ask for attachment of their property owing to their failure to attend on the day fixed in the proclamation, but went to trial upon the evidence which he had succeeded in getting, *held* that in special appeal, the plaintiff was not entitled to ask for a remand of the case, as he had not exhausted all the means that the law gave for the production of his evidence. LUCHMAN SINGH v. CHOKOWREE SINGH, **25 W.R. 154.** [*D.*, 8 A.L.J. 839=10 Ind. Cas. 903.]

(22)—*Witness—Omission to summon witness—Appeal on ground of such omission—Appellant to show that witness not summoned could have given evidence in his favour.*—Where an appellant pleads as a ground of appeal that the Court of first instance did not summon one of his witnesses it is incumbent on him to show that the witness whom he asked to have summoned could or would have given some evidence material to the appellant's case. MAKHI v. BHOLA NATH, **A.W.N. 1896, 120.**

(23)—*Application for further summons to witness not made with due diligence—Court's refusal to issue summons at late stage—Second appeal.*—Where an application for further process to witnesses is not made with due diligence, at the earliest date, the refusal of the Court in the exercise of its discretion, to issue such fresh process is not an error of law for which a second appellate Court will interfere. BANARSI PERSHAD v. MAKHAN ROY, **30 C. 947=7 C.W.N. 514.**

(24)—*Application to summon party to suit as a witness, Court refusing to grant, not bound to give reasons for.*—The ground of special appeal urged by the appellant was that the Court of first instance refused to summon on his application, the plaintiff, for the purpose of giving

Witness—continued.

——7.—**Summons to and Attendance of Witnesses**—*continued.*

evidence in the case, and that the lower appellate Court had affirmed that refusal. He contended that the first Court should have given legal reasons for its refusal *Held* that it was not incumbent on the Court to give legal reasons for its refusal to comply with an application to enforce the attendance of a party as a witness in the case. SIDDHESSURREE DEBIA v. DENOBUNDOO KOONDOO, **6 W.R. 65.**

(25)—*Application for postponement of case to obtain attendance of witnesses—Former applications on same ground granted—Court of first instance refusing the last application—Appeal.*—Where the defendant applied (after several former applications on the same ground had been made and granted) for a further postponement of the case to enable him to produce his witnesses, both the lower Courts found that the application could not be entertained. *Held*, on appeal under the Letters Patent, that the Court of first instance, in refusing the postponement, had properly exercised its discretion. TAYLOR v. SARAT CHUNDER ROY CHOWDHRY, **20 C. 745, Note.** [*R.*, 20 C. 740, 13 C.W.N. 493=9 C.L.J. 367.]

(26)—*Civil Court—Incompetency to bind witnesses by recognizance to give evidence—Warrant for apprehension of witness, when can be used.*—A Civil Court has no power to bind witnesses by recognizances to attend to give evidence on a future day. A verbal order of the Court to the witnesses requiring them to attend on a future day would not justify the issuing of a warrant for the apprehension of such witnesses in case they fail to attend in obedience to such verbal order. S. VENKATAPPAH v. D. PAPAMMAH, **5 M.H.C. 132.**

(27)—*Act* VIII *of* 1859, *ss.* 119, 146—*Case adjourned—Rescission of order of adjournment—Validity*—Onus— *Review — Suit restored—Fresh summons*—Where a Munsif made a regular order which he had power to make under s. 146 of Act VIII of 1859, granting time to the parties, and adjourned the hearing and fixing a day for the further hearing, but, on the same day after he had made that order, he rescinded it on the application of the defendant, *held* that it was incumbent on the defendant to show that the previous order was regularly and properly rescinded. If it was not, the order first made would stand good, and the Munsif had no power to decide the case on the next day when all the evidence which the plaintiff was entitled to produce had not been produced, and was not before him; thus, there was a defect in the procedure and a defect in law which might most materially have affected the decision of the case on the merits. Where a judgment or decision which has been previously passed is set aside either under s. 119 of Act VIII of 1859, or in the exercise of the power of review, and the suit is restored to the position in which it would have been if that judgment has not been passed,

Witness—continued.

——7.—**Summons to and Attendance of Witnesses**—*continued.*

and is to be regularly heard, it is not necessary that all the expense and trouble of obtaining and serving fresh summons should be incurred by the plaintiff. BISHEN PERKASH SINGH v. RUTTUN GEER CHELA, **20 W.R. 2.**

(28)—*Witnesses—Duty of Court to summon witnesses—Reasonable time for attendance.*—There is nothing whatever in the Civ. Pro. Code, Act VIII of 1859, which either expressly or impliedly declares that witnesses must necessarily be summoned before the day fixed for the *first hearing* of the suit. So long as the hearing of the suit merely stands adjourned, and so long as the party who wishes to summon witnesses has not closed his case, the Court is *bound* to summon them, unless it appears that the application is made so late that the witnesses, if summoned, could not attend, or reasonably be expected to attend in time to be examined before the closing of the case of the party summoning him. INDROCHUNDER BABOO v. HAMILTON GRANT DUNLOP, **9 W. R. 530.** [*F.*, 5 Ind. Cas. 184=11 C.L.J. 29; *R.*, 24 W.R. 290.]

(29)—*Practice—Summoning of public officers as witnesses.*—The Rule of Practice contained in the Proceedings of the late Sadr Court, dated 25th August 1823, relative to the summoning of Public Officers, is hereby annulled. The Courts must in future be guided, as in the case of other witnesses, by the provisions of the Civ. Pro. Code. In fixing the time for the attendance of a Public Officer as a witness, or in granting the indulgence of an adjournment for that purpose, the fullest consideration must be given to the exigencies of the public duties of the officer summoned. PROCEEDINGS, 28TH NOVEMBER 1870, **6 M H.C. App. 6.**

(30)—*Summons to witnesses, issuing of—Time of issuing summons—Act* VIII *of* 1859, *s.* 149—*Act* X *of* 1877, *s.*159.—The 20th March of 1877 having been fixed for the final hearing of a suit, the plaintiff, on the 17th of March, and the defendant on the 19th, filed their lists of witnesses to be summoned. Both lists were ordered merely to be put up with the record. When the suit came on for hearing, it was dismissed on the ground that, when the plaintiff filed his list there was not sufficient time left to summon the witnesses. *Held* that the Judge was not justified in dismissing the suit on this ground, unless he found that it would have been absolutely impossible to secure the attendance of the witnesses had the summonses been granted on the 17th March. RAJENDRO NARAIN NEOGI v. RAJA KUMUD NARAIN BHUP, **3 C.L.R. 569.**

(31)—*Remand—Evidence—Opinion of Court—Act* I *of* 1847—*Order of Collector—No finality—Duty of Collector.*—Where the Court on remand observed that it was a case in which the evidence of witnesses would be unnecessary, held that such declaration by the Court on that occasion

Witness—continued.

—7.—**Summons to and Attendance of Witnesses**—*continued.*

sufficiently justified the plaintiffs in making no further application for a summons on their witnesses. [*F.*, 22 B. 253 ; *R.*, 22 W.R. 238.] There is nothing in the terms of Act I of 1847 which either gives finality to the order made by the Collector under the Act, or enables him to go into the questions of disputed title or to do anything more than demarcate by visible and tangible marks the boundaries between estates or fields. RAM JEWAN SINGH v. RADHA PERSHAD SINGH, **16 W.R. 109**. [*F.*, 22 B. 253 ; *R.*, 22 W.R. 238.]

(32)—*Applicant guilty of laches in summoning witnesses—Delay in office—Plea for non-production.*—Where an applicant has been guilty himself of laches in summoning his witnesses, he will not be allowed to set up the delay in the office as a ground for their non-production. BONOMALI MOZUMDAR v. WOOMESH CHUNDER BUNDOPADHYA, **7 C. 730=9 C.L.R. 341.**

(33)—*Process for witnesses before commencement of hearing—Summons, disobedience of—Warrant, application for—Laches of party, condonation of—Professional witnesses, examination of—Adjournment.*—After numerous postponements a suit was ordered on the 20th December 1904 to be heard on the 1st February 1905, and summonses were directed to be issued to the plaintiff's witnesses including defendant No. 2. This was not duly served and on the 1st February, plaintiff applied for postponement and fresh summons. This was granted and the case postponed till the 23rd March. Process fees were duly filed and the summons served, but the defendant No. 2 did not appear. Plaintiff thereupon applied for a warrant which was refused and the hearing commenced: *Held*, there was no laches on the part of the plaintiff, and even if there had been any prior to the 20th December 1904, it was condoned. He was therefore entitled to the warrant prayed for. Every Court, is bound to render all reasonable assistance to a party to enforce the attendance of his witnesses. A party is entitled, at any stage of the case before hearing, to apply for a summons to cite witnesses, without reference to the number of such applications he may have previously made, and it is the duty of the Court to comply with such application, if any time be left before the hearing of the cause. A reasonable latitude should always be given for the convenience of professional men who have their own duties to attend to and cannot dance attendance all day on the chance of being called as witnesses. TARA CHAND SAMANTA v. CHANDRA SEKHAR MOOKERJEE, **11 C.L.J. 29=5 Ind. Cas. 184.** (6 W.R. 14, 11 W.R. 418, 15 W.R. 447, 9 W.R. 530, 9 W.R. 489, *F.*)

(34)—*Summons to witness, procedure relating to service of—Return of summons as witness not found—Summons to witness not to be affixed on house—Civ. Pro. Code, s.* 156.—In this case

Witness—continued.

—7.—**Summons to and Attendance of Witnesses**—*continued.*

the special appellant urged that the lower appellate Court having fixed a date for the final hearing, and the return of the summonses to the witnesses ordered to be present not having been till then received, the Court was wrong in having held that the special appellant was not prepared to prove that the witnesses were material so as to be entitled to the issue of a proclamation in due form. *Held* that the Judge was wrong in having recorded that the special appellant should have on the hearing day been prepared to show that the witnesses were material or had absconded, because, under the circumstances, special appellant could not have done so as he did not know till the very date whether the witnesses would or would not appear the return not having come to hand till then. The High Court also observed that it is not legal in the case of a summons to a witness to affix it on the residence of the witness, the proper course being that prescribed in s. 156, Act VIII of 1859. PREM CHAND ROY v. BEECHARAM MOOKERJEE, **6 W.R. 126.**

(35)—*List of witnesses filed—Batta paid—Duty of Court.*—The service of notice and the return thereof being acts in the hands of the Court and its officers, the Court officers, not the applicant, are responsible for their service and return, if the applicant has duly filed his list of witnesses and paid the *talubana.* MUSSAMUT MUSSITTEE KHANUM v. MUSSAMUT HOOKOOM BIBEE, **15 W.R. 88.** [*R.*, 1 Bom. L.R. 859.]

(36)—*Act* VIII *of* 1859, *s.* 170—*Party summoned as a witness, non-attendance of.*—Where the first Court had decreed against the special respondent on the ground of his refusal to come forward and give evidence after being summoned by the special appellant, the lower appellate Court was not authorized by law to decide entirely the other way without insisting on the absentee's evidence being recorded or giving any reason for dispensing with it. MUSST. BUKHSOOR v. HARUK CHAND SAHOO **1 W.R. 114.** [*D.*, 12 W.R. 242.]

(37)—*Evidence—Witness, non-appearance of, before appellate Court for further cross-examination—No adverse inference can be drawn.*—In a suit on a pro-note, the defence was a denial of execution, and *alibi* on the date of the pro-note. The first Court decreed the suit, relying on the evidence of the plaintiff and two attesting witnesses. One of the attesting witnesses did not appear when summoned to appear in the District Court. *Held* that, as the witness had already been cross-examined and discharged in the first Court, nothing adverse to the truth of his testimony can be inferred, merely because he failed to attend for fresh cross-examination, as there might have been quite innocent reasons for his non-appearance. MUTHAYYA PILLAI v. VELUSAMI, **7 M.L.T. 39=5 Ind. Cas. 511.**

Witness—continued.

——7.—Summons to and Attendance of Witnesses—*concluded.*

(38)—*Power to summon witnesses—Settlement of issues.*—Act VIII of 1859 conferred no authority upon a Judge to issue summonses to witnesses to attend on the settlement of issues. The written statements must be prepared with great care and deliberation, so as to dispense altogether with parol evidence at the settlement of issues. ANUND CHUNDER BANERJI v. WOOMESH CHUNDER ROY, **1 Ind. Jur. O. S. 15=1 Hyde 147.** [The subsequent Codes, however, expressly provide for the attendance of witnesses at the settlement of issues, see Civ. Pro. Code, 1882.]

See APPELLATE COURT — OBJECTIONS FIRST TAKEN IN APPEAL, 3 B.L.R. App. 38.

Witness—Summons to and attendance of witnesses—Power of Court to refuse summons to—*See* CIV. PRO. CODE, 1908, O. XVI, r. 1, 13 C.P.L.R. 152.

——8.—Weight to be attached to Evidence.

(1)—*Evidence of single witness believed by Court, duty of Court to act on.*—The evidence of a single witness if believed will be sufficient, according to the law in the Courts in India, to establish any fact to which the witness might speak directly. If the Judge believes the evidence given by such witness, he ought to decide in accordance with the result of such evidence, and it is only in the event of his not believing the witness, on reasonable grounds, that he can come to a conclusion contrary to what the evidence of the witness purported to establish. RAJAH PROSONNO NARAIN DEB v. ROMONEE DOSSEE, **10 W.R. 236.**

(2)—*Act* II *of* 1855, *s.* 28—*Evidence of single witness, sufficiency of.*—The evidence of one witness, if reliable, is sufficient to prove a fact. ZALEM MISSER v MUSSAMUT KUNDUN KOOER, **11 W.R. 194.**

(3)—*Evidence of single witness—Ejectment—Service tenure—Commutation.*—There is no rule of law which prevents a Court from finding a question of fact, not amounting to high treason and any other offences specifically laid down in the Evidence Act, even on testimony of a single witness, if that testimony is believed by the Court. A suit was filed for the ejectment of the defendant upon the ground that he had failed to render the stipulated service. The defendant pleaded that he had offered a money payment in lieu of that service and that it was quite optional with him to do so. The Court decided the suit against the plaintiff. *Held* that the Court was not bound to take evidence as to the rate of rent to which the service ought to be commuted. RAJAH BALINDUR NARAIN BAHADOOR v. KALLA MESSOO KOOS, **18 W.R. 340.**

(4)—*Ignoring witnesses— Suit for rent — Jurisdiction—Act* VIII (*B.C.*) of 1869.—*Held* that a plaintiff's witnesses could not be ignored, though they might not be believed.

Witness—continued.

——8.—Weight to be attached to Evidence—*continued.*

A suit for rent in kind is cognizable under Act VIII of 1869 (B C.). MULLICK AMANUT ALI v. UKLOO PASEE, **25 W.R. 140.**

(5)—*Bias in a witness—When may be inferred.*—Bias in a witness may be inferred from his being found to misstate facts, from his telling improbable stories, or showing malicious temper against one of the parties. RUN BAHADUR SINGH v. LUCHO KOER, **11 C. 301, P.C. =12 I.A. 23=4 Sar. 602.** (*On appeal from* 6 C. 406.)

(6)—*Witness— Credibility— Supporting false case in material features—Appeal—Setting up case inconsistent with that originally set up—Effect on case made by adversary.*—Where certain witnesses not merely gave an opinion upon an isolated fact in a cause, but clearly showed that they had come to prove a false case—a case false in its material features much reliance could not be placed upon their evidence as to any particular question in the cause. Where in appeal, at the last stage of a case, a new case is set up by a party quite inconsistent with the case set up by him at any time in the cause, it could not be relied upon in so far as it affected the case made by the opposite party. KHAJAH HABEEB OOLLAH v. KHAJAH GOUHUR ALLY KHAN, **18 W.R. 523.**

(7)— *Evidence — Discrepancies.*—If certain persons present at a particular conversation give different accounts of the exact words used, it does not follow that the Judge is justified in assuming that no such conversation took place at all. Different men have different powers of observation; the powers of memory differ widely in different persons and no two men repeating a conversation which took place some time previously (unless before coming into Court they have concerted together) are likely to repeat the conversation in the same words. The substance of what was said is all that is necessary. So, discrepancies in an account of what took place in a conversation are not a sufficient ground for disbelieving statements made by different witnesses. BHAJU SING v. KAIFNATH TEWARI, **3 B.L.R. A.C. 332.**

(8)—*Evidence—Professional witness—Credibility.*—It is no doubt a legitimate objection to a man's credit that he is a professional witness; but to state broadly and generally that a witness has given evidence in other cases, and therefore becomes unworthy of credit, can only tend to increase that indisposition of respectable persons to come into Court as witnesses, which is one of the social evils of India. LALL BEHAREE LALL v. MUSSUMUT GOPEE BEEBEE, **18 W.R. 285, P.C.**

(9)—*Appreciation of oral evidence--Credibility of witness.*—The fact, that the statement made by a witness of a party, does not correspond with the pleading of that party, is not a reason for not giving weight to the evidence of that witness. The real test is whether the evidence

Witness—continued.

—8.—**Weight to be attached to Evidence** —*continued.*

is worthy of credit and, if so, whether it substantially agrees with the case of that party and proves it. ISSUR CHUNDER SANTRA v. J.R. BELLILIOS, **22 W.R. 271.**

(10)—*Appreciation of evidence—Evidence of witness in favour of party calling him—No ground of disbelief.*—To disbelieve a witness because his evidence tells in favour of the party who has called and examined him and against the adverse party is to beg the question in dispute. BAI GULABBAI v. SHRI DATGARJI, **9 Bom.L.R. 393.**

(11)—*Credibility of witnesses — Witness not shaken in cross-examination—Trial Judge satisfied with evidence—Evidence not to be rejected on suspicion.*—Where witnesses, who cannot be regarded as independent witnesses, are not shaken in cross-examination and are believed by the Judge before whom they are examined as witnesses, their evidence should not be rejected on mere suspicion, especially where the story told by them is not in itself improbable. MUSST. MAQBOOLAN v. AHMED HUSAIN, **6 Bom.L.R. 233=26 A. 108=8 C.W.N. 241=31 I.A. 38=8 Sar. 583, P.C.**

(12)—*Weight of oral evidence—Opinion of first Court.*—Evidence of witnesses who, though not independent, were not shaken in cross-examination, if believed in by the Court which heard them and watched their demeanour, should not be thrown out as worthless by the appellate Court on mere suspicion, when their statement is not in itself improbable. MUSSAMMAT MAQBOOLAN v. AHMED HUSAIN, **8 C.W.N. 241, P.C.=26 A. 108=6 Bom. L.R. 233, P.C.=31 I.A. 38=8 Sar. 583.**

(13)—*Appellate Court, examination of witness by—Value of such testimony.*—Though the examination of a witness by appellate Courts is a proceeding which ought not to be taken except under special circumstances and, when doing so, it is most essential to the interests of justice that the Courts should state most fully and clearly the reasons which induced them to depart from the usual course of procedure and to call for fresh evidence in the appellate Court. still, it is not a condition precedent to the exercise of the power vested in appellate Courts to call fresh evidence, that reasons should be recorded; it is in point of law, sufficient if it appear that the appellate Court has considered the matter, and stated that these reasons did exist, without stating what they are. When a party is examined as a witness by the appellate Court, his testimony cannot be treated as conclusive on the point, as it is just as necessary to weigh the value of such testimony as that of any other witnesses in the case. SHIB CHUNDER MAHTOON v. KASHEENATH KURMOKAR, **12 W.R. 245.**

(14)—*Question of fact—Appreciation of evidence—Reversal by lower appellate Court—Remand.*—The first Court having come to a certain

Witness—continued.

—8.—**Weight to be attached to Evidence** —*continued.*

conclusion on a question of fact, the lower appellate Court was held not entitled, unless there were very good reasons for so doing, to reverse the judgment, upon a mere question of testimony, on the ground that the reasons given by the Munsif did not satisfy the appellate Court. The High Court consequently remanded the case to the lower appellate Court for a fresh decision on the evidence, holding that the Judge's reasons were exceedingly inconclusive and unsatisfactory. NOBIN CHUNDER POOSHALEE v. BUNGO CHUNDER CHATTERJEE, **25 W.R. 363.**

(15)—*Credibility of witnesses—Decision of lower Courts not to be interfered with in special appeal.*—The credibility of witnesses is a matter altogether for the Court of first instance and the Court which hears the regular appeal; and, where these Courts are satisfied, and especially when they are concurrently satisfied that the witnesses are not to be believed, it is not competent to the High Court to set aside their decision upon a question of fact even though upon a general view of the case, it should be of opinion that if it had tried the case originally, it might have come to a different conclusion to that arrived at by those Courts. GOUREE PERSHAD KOONDOO v. PRANNATH SURMAH, **10 W.R. 365.**

(16)—*Opinion about the credibility of witnesses, interference by the Privy Council with.*—Their Lordships of the Privy Council did not conceive it to be any part of the duty to criticise with any strictness the opinion expressed by the lower Courts as to the credibility of witnesses; that being eminently a question for the Courts in India. MUSSAMMAT SAAFIQ-UN-NISSA v. RAJA SHABAN ALI KHAN, **6 Bom. L.R. 750=26 A. 581, P. C.=9 C.W.N. 105=7 O.C. 290=31 I.A. 217=8 Sar. 674.**

(17)—*Part of evidence disbelieved—Value of other evidence coming from him.*—Though it is true that a Judge disbelieving a part of the evidence of a witness must view very warily other evidence coming from the same quarter, that does not exonerate the Court from weighing whatever evidence has actually been tendered and the mode in which it has been met. RAMESWAR KOER v. BHARAT PERSHAD SAHI, **4 C.W.N. 18, P.C.**

(18)—*Lower Appellate Court referring issue of fact to jury—Person convicted of perjury or other Criminal offence, credibility of.*—The Civ. Pro. Code, nowhere empowers a Judge to try with the aid of a jury. The evidence of a person who has been punished for perjury, or of a person who has been convicted of a criminal offence, can hardly be entitled to the same credit as would be accorded to the testimony of a person against whom no such imputation could be brought. DOONGUN RAI v. DOORGA RAI, **2 N.W.P. 97.**

Witness—continued.

—8.—Weight to be attached to evidence —*continued.*

(19)—*Civil suit—Rejection of evidence of witnesses on ground that they were declared untrustworthy by Criminal Court.*—*Held*, that the Judge committed a manifest error of law in rejecting the evidence of three of the defendant's witnesses on the ground that these witnesses had already been examined in the Criminal Court with reference to the charge of breach of trust laid against the defendant (in respect of the money sued for) and had been found untrustworthy. LALL CHAND ROY v. BRINDABUN CHUNDER ROY, **13 W.R. 226.**

(20) *-Omission of plaintiff to produce important witness —Effect—Duty of Court.*—Although a plaintiff must produce the best evidence in his power to prove his case, yet, the failure on his part to produce a most important witness must not prevent the Court from considering the weight and legal effect of the remaining witnesses. LATORE MISTREE v. AGAMUDDEE NUSHYO, **14 W.R. 482.**

(21)—*Procedure—Issues—Subject of issues—Motive for suit—Evidence.*—It may be laid down as a general rule that only such averments should be made the subject of issues as are essential to support the cause of action and are denied by the defendant, or as are essential to support a plea and are denied by the plaintiff. Mere pieces of evidence which are to be adduced to enable the Court to infer the truth of a material averment ought not to be made the subject of separate issues. A plaintiff may have been actuated by ill-will in instituting the suit and may have done so out of pique; but if he establishes that he had a cause of action, his motive in bringing the suit would not be an answer to it, although, where the evidence in support of his case is doubtful, the Judge in weighing that evidence, may take into consideration the motives imputed to the plaintiff as having induced him to sue. BIRCH v. FURZIND, **3 N.W.P. 303.**

(22)—*Investigations in Revenue Courts—Procedure.* — It was never intended that Revenue Courts should delegate their functions entirely to subordinate officers. The law contemplates a careful investigation and trial in the Revenue Court, local investigation being had recourse to not so much for collecting evidence which could be taken in Court, but to obtain the evidence which from its peculiar nature could only be obtained on the spot. BHOWANEE DUTT SINGH v. BEER SINGH, **2 N.W P. 196.**

(23)—*Exemption from appearance in Court—Natives of rank, Prejudices of, to appear in Court.*—The prejudices of natives of rank to appear as witnesses in a Court of justice will not be allowed to relax the rule that the best evidence must be produced of which the case is susceptible. RAM MOHUN MOOKERJEE v. NURSING DEB, **1 Ind. Jur. O.S. 63 = W.R. F.B. 54.**

Witness—continued.

—8.—Weight to be attached to evidence —*concluded.*

(24)—*Suit for cancellation of mortgage-deed—Denial of attestation—Presumption as to execution.*—The defendants were bound by the statements of the witnesses they had elected to put in the box, and they should not have been discredited simply because their evidence turned out unfavourable to the side on which they had been summoned. HARDIAL v. RAM DAS, **A. W.N. 1884, 19.**

(25)—*Reg.* VIII *of* 1819, *s.* 8, *cl.* 2—"*Substantial witnesses,*" *meaning of — Attestation—'Residing in the neighbourhood,' meaning of—Residents of village.*—The expression 'substantial witnesses' in cl. 2, s. 8, Reg. VIII of 1819, means men who have some stake in the community, men of local influence or importance or respectability. The Regulation does not make it imperative that the attesting witnesses shall be residents of the village. The words "residing in the neighbourhood" include those living within a short distance of the cutcherry. MOHINEE DASEE v. JUGGODUMBA DOSSEE, **W.R. 1864, 381.**

See SPECIAL OR SECOND APPEAL—GROUNDS OF APPEAL, 14 W.R. 23.

Discrediting — for general reasons not affecting his particular credit—Mistake of Law —Second appeal.—*See* SPECIAL OR SECOND APPEAL—GROUNDS OF APPEAL, 1 N.L.R. 31.

—9—Miscellaneous.

(1)—*Court's knowledge of character of witness.*—A Court can make use of its knowledge of the character of a witness, in order to decide whether to give credit to his evidence or not. MAHOMED BUKSH KHAN v. HOSSEIN BIBEE. **15 C. 684 = 15 I.A. 81, P.C. = 5 Sar. 175.** [*R.*, L.B.R. (1893—1900), 445.]

(2)—*Hearsay evidence — Evidence — Living witness — Information derived from deceased persons — Independent opinion on hearsay—Hearsay evidence.*—It is admissible evidence for a living witness to state his opinion on the existence of a family custom and to state as the grounds of that opinion information derived from deceased persons and the weight of evidence will depend on the position and character of the witness and of the persons on whose statements he has formed his opinion; but it must be the expression of independent opinion based on hearsay and not mere repetition of hearsay. GARURUDHWAJA v. SAPARANDHWAJA. **2 Bom. L.R. 831 = 23 A. 37 = 27 I. A. 238 = 5 C.W.N. 33 = 10 M.L.J. 267 = 7 Sar. 724 ,P.C.**

(3)—*Recusant witnesses—Sale of property—Trial by Criminal Authorities.*—The Court should proceed under s. 168 of Act VIII of 1859 for the attachment and sale of the property of recusant witnesses in order to realize such fine as the Court may have under that section imposed itself, and should also order those witnesses to be tried by the Criminal Authorities as

Witness—continued.

—9.—**Miscellaneous**—*continued.*

provided for in the Penal Code. SREEMUTTY SARODA DOSSEE v. RAJAH BURODA KANT ROY, **5 W.R. Act X, Rul. 49.**

(4)—*Application for examination by commission—Court to which it should be made.*—An application to compel the attendance of a witness for examination by commission should be made to the Judge executing the commission, within whose jurisdiction, the witness is resident. TARINI CHARAN CHOWDHRY v. SARODA SUNDARI DASI, **3 B.L.R.A.C. 145=11 W.R. 468.**

(5)—*Statement made by witness when giving evidence in civil action—Privilege—Defamation.*—A statement made by a witness, in his character as such, when giving evidence in a civil action, is a privileged one and cannot be made the basis of an action for damages for defamation. TULSI RAM v. HARBANS, **A.W.N. 1885, 301.**

(6)—*Liability of, for giving false evidence.*—The giving of false evidence, no matter how malicious and *mala fide* it may be, furnishes no right to sue in a civil Court, the only remedy being a prosecution for perjury. The mere fact that the giving of the false evidence is alleged to be the result of a conspiracy to obtain the conviction of a person of a criminal offence does not make any difference. TEMPLETON v. LAURIE, **2 Bom. L.R. 623=25 B. 230.**

(7)—*Prosecution of, after he has given his evidence to a certain extent*—A witness, after he has given his evidence to a certain extent, cannot be made an accused and tried along with the other accused, though his name might have been mentioned in the original complaint by the Magistrate. A procedure like this is highly calculated to intimidate other witnesses. EMPEROR v. KRISHNA, **7 Bom. L.R. 472.**

(8)—*False evidence—Witness, liability of, for giving false evidence—Personal rights, infringement of—False evidence, giving of, not actionable—Civil Procedure Code, s. 16—Jurisdiction—Costs, costs in the cause, meaning of.*—No action for damages will lie against a witness in respect of words spoken by him in the witness-box although they are false. The word "wrong" in s. 16 of the Code of Civil Procedure, means an actionable wrong; and the giving of false evidence is not an actionable wrong. Where, therefore, the only act done by the defendants within the original jurisdiction of the High Court was the giving of false and malicious evidence to the peril and prejudice of the plaintiff, pursuant to a conspiracy formed in a Native State, it was held that a suit for the injury caused in consequence of giving false evidence could not be instituted in the High Court as no cause of action arose within its jurisdiction. *Held*, also, that causing a person to be falsely charged with a criminal offence, to the knowledge of the person so causing him to be charged, is an infringement

Witness—concluded.

—9.—**Miscellaneous**—*concluded.*

of the personal right of reputation and freedom of that person, and renders the person so causing civilly liable to him. Any invasion of the civil rights of another person is in itself a legal wrong carrying with it liability to repair its necessary or natural consequences in so far as these are injurious to the persons whose right is infringed whether the motive which prompted it be good, bad or indifferent. *Held*, also, that where one person has infringed the personal rights of another, other persons who combine with him towards such infringement will also be held liable. *Held*, further, that "costs, costs in the cause" do not mean that costs will follow the event, but that those costs remain to be dealt with by the Court at the hearing. TEMPLETON v. LAURIE, **2 Bom. L.R. 244=25 B. 230.**

This Circular enjoins rules for the production, as witnesses in civil and criminal cases of persons confined in civil and criminal jails. **Civ. Cir. No. 10 of 7th September 1868, 10 W.R. Civ. Cir. 5.**

This Circular prescribes form of diary for attendance of witnesses in civil cases. **Civ. Cir. No.20, 20. W.R. Rules & Ors. of the H.C., p. 9.**

Evidence, Improper rejection of—Refusal to examine witnesses brought to Court by the plaintiff—Error or irregularity affecting the merits of the case—*See* APPEAL—GROUNDS OF APPEAL, A.W.N 1894, 51.

Omission by first Court to examine witnesses—Decree dismissing suit—Appellate Court reversing such decree, duty of—*See* APPELLATE COURT—DUTY OF APPELLATE COURT, 9 A. 339=A.W.N. 1887, 61.

Additional sum "allowed" to defray additional expense of—Transmission of "Bill" to another Court "ordered," whether constitutes order for payment executable by attachment and sale—Refusal by Court to execute order transmitted—Revision—*See* CIV. PRO. CODE, 1908, O. XVI, rr. 2, 4, O. XXI, r. 11 (2), 7 M. L.T. 76=25 Ind. Cas. 742.

Signature on document as—Knowledge of contents—Effect—*See* ESTOPPEL--ESTOPPEL BY CONDUCT, 7 A.L.J. 664=7 Ind. Cas. 264.

Dying after examination-in-chief, but before cross-examination—Admissibility of evidence—*See* EVIDENCE ACT, 1872, s. 33, 7 M.L.T. 41=11 Cr. L.J. 145=5 Ind. Cas. 512=20 M.L. J. 400.

Of high social position—Ignoring his testimony—Revision—*See* PROVINCIAL SMALL CAUSE COURTS ACT, 1887, s. 25, 89 P.W.R. 1910=7 Ind. Cas. 530.

Statement of — When privileged — *See* SLANDER, 9 C.W.N. 847=2 C.L.J. 396=32 C. 1060.

Witnesses, Recusant.

See ACT XIX OF 1853.

Woman.

See CONTRACT ACT, 1872 s. 23, 82 P.R. 1904.

Karnam in Zamindari Village—Female claimant—*See* KARNAM, 10 M. 226.

Office of Karnam—*See* KARNAM, 2 M. 312.

Mosque, temporal and spiritual affairs of—Competency to manage—*See* MAHOMEDAN LAW—WAKF, 4 M.H.C. 23.

Suit by male members of family—Insult to—*See* RIGHT OF SUIT—GENERAL, 1 Agra, 264.

Wood.

Contract to supply wood—*See* ACT XIII OF 1859, 4 B.L.R. App. 1.

Words and Phrases.

"Right, title and interest" *See* EXECUTION OF DECREE—*See* also EXECUTION SALE.

"Account stated"—*See* LIMITATION ACT, 1908, art. 64, 7 B. 414.

"Accrual of right to sue"—in s. 634 of Act III of 1899 (Calcutta Municipal Act)—*See* BEN. ACT III OF 1899, s. 634, 9 C.W.N. 217 =32 C. 277.

"A certain date"—*See* LIMITATION ACT, 908, ART. 182—ORDER FOR PAYMENT AT SPECIFIED DATES, 7 M. 83.

"A copy of any order for the execution of the decree"—*See* CIV. PRO. Code, 1908, s. 47, 13 B. 371.

"A Court executing a decree"—*See* CIV. PRO. CODE, 1908, s. 47, 23 M. 377=10 M.L.J. 91.

"Acquisition"—*See* ACT I OF 1894, s. 23, 25 C. 346.

"Act"—*See* BEN. ACT III OF 1884, ss. 85, 363, 2 C.W.N. 689.

"Acted illegally"—*See* SUPERINTENDENCE OF HIGH COURT, 1 C.W.N. 617.

"Acted illegally or with material irregularity"—*See* SUPERINTENDENCE OF HIGH COURT, 1 C.W.N. 633.

"Act illegally or with material irregularity in the exercise of its jurisdiction"—*See* CIV. PRO. CODE, 1908, s. 115, 27 M. 504.

"Actionable claim"—*See* ST. 11 AND 12, VIC. C. 21, s. 86, 21 B. 572.

"Actionable claim"—*See* TRANSFER OF PROPERTY ACT, 1882, ss. 8, 130 and 135, 17 M.L.J. 87=30 M. 235.

"Actual pecuniary damage"—*See* PROVINCIAL SMALL CAUSE COURTS ACT, 1865, s. 6 (3), 4 B.L.R. App. 59=13 W.R. 118.

"Actual seizure"—*See* LIMITATION ACT, 1908, arts. 29, 42, 27 M. 346.

"A decision settling rent"—*See* BEN. ACT VIII OF 1885, ss. 106, 109-A. 31 C. 380.

"A decree for money against several persons"—*See* CIV. PRO. CODE, 1908, O. XXI, r. 16, 9 Bom. L. R. 409=31 B. 308.

Words and Phrases—*continued.*

"Adimayavana"—*See* MALABAR LAW—MISCELLANEOUS, 27 M. 202.

"Adimayavana"—*See* RES JUDICATA—MISCELLANEOUS, 30 M. 203.

"Adjacent"—*See* ENHANCEMENT OF RENT—ENHANCEMENT, GROUNDS OF, 1 Agra Rev. 64.

"Adjacent"—*See* PRE-EMPTION—MISCELLANEOUS, 90 P.R. 1909, F.B.=159 P.W.R. 1909=4 Ind. Cas. 119=147 P.L.R. 1909.

"Admission"—*See* EVIDENCE ACT, 1872, s. 70, 27 C. 190.

"Admitted"—*See* ST. 11 AND 12 VIC. C. 21, s. 26, 1 C.W.N. 328.

"*Affecting the decision of the case,*" *meaning of—Civ. Pro. Code*, 1882, *s.* 591.—The words "affecting the decision of the case" in s. 591, must be taken to mean "affecting the decision of the case," with reference to the merits of it. CHENTAMONY DASSI v. RAGHOONATH SAHOO, **22 C. 981.** [*F.*, 25 A. 280=23 A. W. N. 39, 2 N.L.R. 179.]

"Affecting the decision of the case"—*See* CIV. PRO. CODE, 1908, s. 104, O. XLIII, r. 1, s. 105, O. IX, r. 13, 25 A. 280=A.W.N. 1903, 39.

"Affecting the decision of the case"—*See* CIV. PRO. CODE, 1908, O. XLI, rr. 17, 19, s. 105, 24 A. 464=A.W.N. 1902, 136.

"Affirming" judgment of lower Court—*See* APPEAL TO PRIVY COUNCIL—CASES WHERE APPEALS LIE OR NOT, 16 C. 287.

"Affirms the decision"—*See* CIV. PRO. CODE, 1908, s. 110, 25 A. 109, P.C.=30 I.A. 35=5 Bom. L.R. 100.

"After passing of Act"—*See* BEN. ACT VIII OF 1869, Marsh 637.

"After passing of the Act"—*See* STATUTE, CONSTRUCTION OF, Marsh 637.

"After the passing of the Code"—*See* CIV. PRO. CODE, 1908, O XXI, rr. 10, 21, s. 48, A.W.N. 1881, 58, A.W.N. 1881, 74, A.W.N. 1881, 113.

"Agreed to be given"—*See* STAMP ACT, 1879, sch. I, art. 44, cl. (*a*), 10 C. 274.

"Agreement"—*See* CONTRACT ACT, 1872, s. 2, 5 Bom. L.R. 689=28 B. 66.

"Agricultural purposes"—*See* MAD. ACT IV OF 1884, s. 63, cl. 3, 12 M.L.J. 393=25 M. 627.

"Agricultural year"—*See* DEED—CONSTRUCTION OF DEEDS, 18 A. 388=A.W.N. 1896, 123.

"Agriculturist"—Suit by—*See* BOM. ACT XVII OF 1879, s. 2, 19 B. 255.

"Agriculturist"—*See* BOM. ACT XVII OF 1879, ss. 2 (2), 11, 4 B. 360.

"Agriculturist"—*See* BOM. ACT XVII OF 1879, ss. 2, 3, 11, 4 B. 624.

"Agriculturist"—*See* BOM. ACT XVII OF 1879, s. 12, 10 B. 367, 11 B. 469.

"Agriculturist"—*See* CIV. PRO. CODE, 1908, s. 60, 13 C.P.L.R. 30.

Words and Phrases—*continued.*

"Aivaj"—*See* DEED—CONSTRUCTION OF DEEDS, 16 B. 172.

"Alienated holdings"—*See* BOM. ACT V OF 1879, ss. 153, 159, 162, 16 B. 455.

"Alienation," meaning of—in Act I of 1876 (Madras).—*See* MAD. ACT I OF 1876, 16 M.L. J. 468=1 M.L.T. 421=30 M. 106.

"Alienee"—*See* MAD. ACT I OF 1876, 16 M. L.J. 468=1 M.L.T. 421=30 M. 106.

"Alienor"— *See* MAD. ACT I OF 1876, 16 M.L.J. 468=1 M.L.T. 421=30 M. 106.

"All other cases"—*See* JURISDICTION — SUITS FOR LAND, 4 B. 482.

"All proceedings"— *See* ACT IV OF 1869, ss. 7, 11, 45, 30 C. 489.

"All such appeals"—*See* BOM. ACT X OF 1876, s. 11, 6 Bom.L.R. 124=28 B. 332.

"All the parties to the suit"—*See* AWARD, 24 A. 229=A.W.N. 1902, 19.

"Altamgha"—*See* MAHOMEDAN LAW — WAKF, 6 W.R.P.C. 3=2 M.I A. 390.

"Always or for ever" — *See* WILL — CONSTRUCTION, 5 C.W.N. 569, P.C.=28 I.A. 65=23 A. 324.

"Amla," meaning of—*See* LANDLORD AND TENANT—MISCELLANEOUS, 6 Ind. Cas. 399.

"Amount claimed" — *See* DECREE — DECREE, CONSTRUCTION OF, A.W.N. 1889, 114.

"Amount of rent annually payable by a tenant"—*See* BEN. ACT VIII OF 1885, s. 153 (*a*), 17 C. 489.

"Amount or value of the subject-matter of the suit"—*See* ACT I OF 1887, s. 3, cl. (13), 13 A. 320=A.W.N. 1891, 107.

"Amount sued for"—*See* BEN. ACT I OF 1879, ss. 37, 39, 137, 144, 24 C. 249=1 C.W. N. 181.

"An account"— *See* PROBATE AND ADMINISTRATION ACT, 1881, s. 98, 25 C. 250= 1 C.W.N. 646.

"Ancestor"—*See* ANCESTOR, 27 M. 300, F.B.

"*And in any case,*" *meaning of*—*S.* 155, *Act* VIII *of* 1885, *Bengal Tenancy.*--The words "and in any case" in s. 155 of Act VIII of 1885, mean "in every case." PERSHAD SINGH v. RAM PERTAB ROY, 22 C. 77.

"And it shall be lawful for the Court on those or any other occasions"— *See* ST. 11 AND 12, VIC. C. 21, ss. 26, 36, 29 C. 503.

"Annual net profits of mines"—*See* BEN. ACT IX OF 1880, ss. 5, 6, 72, 81, 5 C.L.J. 148 =34 C. 257.

"Annual value"—*See* BEN. ACT IV OF 1876, ss. 88, 104, 117, 11 C. 275.

"Antecedent debts"— *See* HINDU LAW— DEBTS, 72 P.R. 1898.

"Anubhavam or Anubogam"—*See* MORTGAGE—REDEMPTION, 16 M.L.J. 358=1 M.L. T. 290=29 M. 501.

Words and Phrases—*continued.*

"Any"—*See* LIMITATION ACT, 1908, art. 164, A.W.N. 1884, 322.

"Any damage he may sustain"—*See* BOM. ACT III OF 1872, 14 B. 292.

"Any matter"— *See* RES JUDICATA — MATTERS IN ISSUE, 6 Bom. L.R. 594.

"Any other act of bad faith"—*See* INSOLVENCY — INSOLVENCY UNDER CIV. PRO. CODE, 17 A. 218, F.B.=A.W.N. 1895, 63.

"Any other party"—*See* CIV. PRO. CODE, 1908, O. XI, r. 15, 17 B. 384.

"Any other person interested in the property"—*See* PROBATE AND ADMINISTRATION ACT, 1881, s. 90 (4), 23 C. 446.

"Any other reasonable cause"—*See* ACT XVIII OF 1879, s. 13, 9 P.R. 1902.

"Any other reasonable cause"—*See* ACT XVIII OF 1879, s. 13, cl. (*f*), 29 C. 890, F.B. =6 C.W.N. 556.

"Any other reasonable cause"— *See* ACT XVIII OF 1879, ss. 13, 14, 27 C. 1023=4 C. W.N. 389.

"Any other sufficient reason"— *See* REVIEW—GROUNDS FOR REVIEW, 9 A. 36, 9 A. 61, F.B.

"Any other written grant"—*See* BOM. ACT X OF 1876, s. 4 (*a*), (*b*), (*i*), (*j*), (*k*), 6 Bom. L.R. 648=29 B. 19.

"Any person"—*See* ACT XVIII OF 1879, s. 32, 14 C. 556, F.B.

"Any person" — *See* GUARDIANS AND WARDS ACT, 1890, s. 12 (3) (*b*), 10 P.R. 1898.

"Any person whose immoveable property has been sold"— *See* CIV. PRO. CODE, 1908, O.XXI, r. 90, 14 C. 240, 8 C. 367=10 C.L.R. 441.

"Appeal"— *See* LIMITATION ACT, 1908, ss. 4, 5, art. 170, 30 C. 790.

"Appeal"—*See* LIMITATION ACT, 1908, art. 182—MISCELLANEOUS, 22 B. 500.

"Appeal allowed by law"—*See* BOM. ACT X OF 1876, s. 11, 22 B. 583.

"Appealed against"— *See* REGISTRATION ACT, 1908, ss. 72, 73, 4 B.L.R. A.C. 65=12 W.R. 385.

"Appear"—*See* BOM. ACT III OF 1888, s. 354, 10 Bom. L.R. 821=33 B. 334.

"Appearance"—*See* CIV. PRO. CODE, 1908, O. IX, rr. 6, 13, 18 A. 241=A.W.N. 1896, 47.

"Appearance"—*See* CIV. PRO. CODE, 1908, O. IX, rr. 8, 9, 22 A. 66, F.B.=A.W.N. 1899, 176.

"Appearaence"—*See* CIV. PRO. CODE, 1908, O. IX, r. 13, O. XVII, r. 2, 8 A. 140=A.W.N. 1886, 42.

"Appellant"—*See* COSTS—SPECIAL CASES, 8 C. 440=10 C.L.R. 437.

"Appellate jurisdiction"—*See* ACT XVIII OF 1879, s. 8, 24 A. 348, F.B.=A.W.N. 1902, 86.

Application — Interpretation put on the word "application" as used in Civ. Pro. Code,

Words and Phrases—*continued.*

and Limitation Act not depending on Succession Certificate Act. Both the Civ. Pro. Code, and the Limitation Act having been passed long before the Succession Certificate Act, whatever interpretation may be put on the word "application," as used in the Civ. Pro. Code, and the Limitation Act, it could in no way depend upon the Succession Certificate Act. HAFIZUDDIN CHOWDHRY v. ABDOOL AZIZ, **20 C. 755.**

"Apportionment"—*See* ACT X OF 1870, PART IV, ss. 15, 29, 16 B. 525.

"Appurtenances"—*See* DEED—CONSTRUCTION OF DEEDS, 6 Bom. L.R. 995=30 B. 250.

"Are employed"—*See* BOM. ACT III OF 1888, s. 249, 23 B. 528=1 Bom. L.R. 12.

"Arrear"— *See* BEN. ACT VIII OF 1869, s. 29, 6 C. 325=7 C.L.R. 342.

"Arrest" — *See* INSOLVENCY — INSOLVENCY UNDER CIV PRO. CODE, 11 C. 451.

"As determinable"—*See* COURT FEES ACT, 1870, s. 7, cl. 4, sch. II, art. 17, cl. 1, 8 Bom. L.R. 885=31 B 73.

"Assets"—*See* ACT II OF 1874, s. 54, 25 C. 65.

"Assignee"—*See* ACT V OF 1888, 23 C. 702.

"Assignee"—*See* BEN ACT VIII OF 1885, s. 148, cl. (*h*), 26 C. 750=4 C.W N. 446.

"*As the Court shall see fit*"—*Civ. Pro. Code*, 1877, *ss.* 329, 331—*Execution—Obstruction by stranger.*—In construing the words "as the Court shall see fit," in s. 329, Civ. Pro. Code, regard should be had to the circumstances in respect of which the power is to be exercised. GOVINDA NAIR v. KASAVA, **3 M 81.**

"A tax upon a trade"—Abolition of cesses on trades—Duty on cotton exported from Broach, *See* CESS, 14 B. 526, P. C.=17 I.A. 103.

"Attested"—*See* TRANSFER OF PROPERTY ACT, 1882, s. 59, 4 Bom. L.R. 869=27 B. 91.

"At the time when the Collector takes possession of lands."—*See* ACT I OF 1894, s. 23, 25 C. 346.

"*Aulad*"—*Meaning of.*—In places where females are largely recognized as heirs, the term *aulad* must be understood as meaning male and female issue CHIRAGH BIBI v. HASSAN, **19 P.R. 1906=70 P.L.R. 1906.** (89 P.R. 1892, 25 P.R. 1882, 174 P.R. 1880, *R.*) [*Cited*, 14 P.R. 1907; *R.*, 135 P.R. 1908, 60 P.R. 1910, 72 P.R. 1906.]

"Aulad Dukhtari"—*See* HINDU LAW—MISCELLANEOUS, 6 O.C. 132.

"Aulad va ahfad"— *See* MUHAMMADAN LAW—WAKF, 10 B. 119.

'Aulad wa ahfad' in grants—*See* GRANT—CONSTRUCTION, 13 Ind. Cas. 155.

"Authority competent in this behalf"—*See* CIV. PRO. CODE, 1908, O. XXXII, rr. 1, 4 (2), 9 Bom. L.R. 553=31 B. 413.

Words and Phrases—*continued.*

"Avasyamayi Chodikambole"—*See* MALABAR LAW—MORTGAGE, 26 M. 727, F.B.

"Avasyamayi Vorumbole"—*See* MALABAR LAW - MORTGAGE, 26 M 727, F.B.

"Average"—*See* BEN. ACT VIII OF 1885, s. 30 (*a*), 21 C. 986.

"Avoid."—*See* LIMITATION ACT, 1908, art. 121, 4 C. 860=4 C.L.R. 6.

"Award"—*See* ACT I OF 1894, 23 C. 526.

"Award"—*See* LIMITATION ACT, 1908, art. 46, 25 P.R. 1883.

"Bad faith."—*See* CIV. PRO. CODE, 1908, O. XXII, r. 7, 7 B.L.R. Ap. 23.

"Bad faith"—*See* INSOLVENCY—INSOLVENCY UNDER CIV. PRO. CODE, 3 B.L.R. App. 14 (*b*), 5 B.L.R. App. 22.

"Badi"—*See* HINDU LAW—GIFT, 6 M. 319.

"Bandhuvallus"—*See* HINDU LAW—ADOPTION, 17 M.L.J. 186=2 M.L.T. 340.

"Banker"—*See* STAMP ACT, 1879, ss. 3, (6). 34, 17 B. 684, F.B.

"*Bapika Vanshamanthi*"— *See* WILL — CONSTRUCTION, 10 Bom. L R. 97.

"Barabar"—*See* USER, 3 B.L.R.A.C. 166=11 W.R. 522.

"Becomes known to plaintiff."—Suit to set aside adoption—Limitation.—*See* LIMITATION ACT, 1908, art. 118, 13 M.L.J. 359.

"Before the passing of a decree in an original suit"—*See* CIV. PRO. CODE, 1908, s. 145, 26 C. 222=3 C.W.N. 228.

"Belief in good faith."—*See* HINDU LAW—WIDOW, 13 C.W.N. 931=3 Ind Cas. 415.

"Belonging to." — *See* PARTNERSHIP — RIGHTS AND LIABILITIES OF PARTNERS, 3 B.L.R. O.C. 80.

"Between the parties"—*See* EVIDENCE—PAROL EVIDENCE, 10 A. 421=A.W.N. 1888, 127.

"Bhai-band"—*See* PRE-EMPTION—CONSTRUCTION OF WAJIB UL-ARZ, 6 A. 57=A. W.N. 1883, 206.

"Books regularly kept in course of business"—Meaning of—*See* EVIDENCE — ACCOUNTS AND ACCOUNT BOOK, 4 B. 576.

"Bound by law" — *See* CONTRACT ACT, 1872, s. 69, 4 C. 369.

"Bound by law to pay."—*See* CONTRACT ACT, 1872, s. 69, 6 C.W.N. 336.

"Brethren"—*See* PRE-EMPTION — CONSTRUCTION OF WAJIB-UL-ARZ, 2 Agra, 31.

"Brothers"—*See* U. P. ACT I OF 1869, 7 O C. 248.

'Business'—*See* JURISDICTION — CAUSES OF JURISDICTION, 14 C. 256.

"Candidate for a degree." — *See* BOM. ACT, XXII OF 1857, s. 12, 23 B. 465.

Words and Phrases—*continued.*

"Capital"—*See* MAD. ACT I OF 1884, sch. A, 11 M. 238.

"Cardinal issue"—*See* CIV. PRO. CODE, 1908, O. XLI, r. 22, ss. 109, 110, 1 A.L.J. 26.

"Carrying on business"—*See* JURISDICTION—CAUSES OF JURISDICTION, 18 B. 290; 1 M. H. C. 286, 18 B 294, P. C., 14 B. 541.

"Carry on business."—*See* JURISDICTION—CAUSES OF JURISDICTION, 3 M H. C. 146.

"Case"—*See* CIV. PRO. CODE, 1908, s. 115, A. W. N. 1882, 2, A. W. N. 1882, 39; A.W.N. 1883, 37.

"Case"—*See* CIV.PRO. CODE, 1908, O. XLI, r. 23, s. 115, A. W. N. 1883, 171.

"Case"—Adjudication by collector as to duty chargeable on instrument no "case"—*See* STAMP ACT, 1899, ss. 31, 32, 57, 25 M. 751.

"Cases to which English Law is applicable"—Construction of—Extent of applicability of Trustee Act to Hindu trusts—Equitable jurisdiction of High Court—*See* ACT XXVII OF 1866, s. 3, 5 B. 154.

"Cash on delivery"—*See* CONTRACT—CONSTRUCTION OF CONTRACTS, 16 C. 417.

"Caste"—*See* BOM. REG. II OF 1827, s. 21, 20 B. 190.

"*Cause of action*"—*Civ.Pro. Code, Act XIV of* 1882, s. 424—*Cause of action—Construction.*—The words "Cause of action" in s. 424 of the Civ. Pro. Code, should not be too strictly construed. BACHCHU SINGH v. THE SECRETARY OF STATE FOR INDIA IN COUNCIL, **25 A. 187.** [*R.*, 8 C.W.N. 913, 34 C. 305=5 C.L. J. 270.]

"Cause of action"—*See* CAUSE OF ACTION, 1 C. 144=25 W. R. 1=2 I. A. 283, 1 N.L.R 4.

"Cause of action"—*See* CIV. PRO. CODE, 1908, s. 20, 9 C. 105, 25 A. 48=A. W. N. 1902, 179.

"Cause of action"—*See* CIV. PRO. CODE, 1908, O. I. rr. 1. 4 (*a*), 9. 10 C. W. N. 508=33 C. 367.

"Cause of action"—*See* JURISDICTION—CAUSES OF JURISDICTION, 11 B. 649, 14 C. 256.

"Cause of action"—*See* JURISDICTION—QUESTION OF JURISDICTION, 11 B. 160 N=P. J. 1875, p. 218.

"Cause of action"—*See* LETTERS PATENT, HIGH COURT, 1865—MADRAS, art. 12, 27 M. 494.

"Cause of action"—*See* PLAINT—FORM AND CONTENTS OF PLAINT, 1 Ind. Jur. O.S, 12.

"Cause of action"—*See* RELIEF, 5 A. 345, F.B.

"Cause of action"—*See* RELINQUISHMENT OF PORTION OF CLAIM, 5 M. H. C. 499.

"Cause of a like nature—*See* CIV. PRO. CODE, 1908, O. XXIII, r. 1, 7 Bom. L.R. 90 =29 B. 219.

Words and Phrases—*continued.*

"Cause of a like nature"—*See* LIMITATION ACT, 1908, s. 14, 17 M. 299.

"Cause similar publication to be made"—*See* BEN. REG. VIII OF 1819, cl. 3, s. 8 and s. 14, 18 C. 363, F. B.

"Certified purchaser"—*See* BENAMI TRANSACTION—CERTIFIED PURCHASERS, 8 Bom. L.R. 873=31 B. 61.

"Charitable and religious"—In wakf-deed how construed—*See* MAHOMEDAN LAW—WAKF, 19 C. 412.

"Charitable purpose"—Taxation—University buildings—Exemption—*See* BOM. ACT III OF 1888, ss. 143, 144, 16 B. 217.

"Children"—*See* HINDU LAW—WILL, 20 B. 571.

"Children"—*See* WILL—CONSTRUCTION, 5 B.L.R. 1, P.C. =13 W.R.P.C.41 =13 M.I A, 277.

"Claim"—*See* BOM. ACT, XVII OF 1879, s. 12, 7 Bom. L.R. 688.

"Claimable"—*See* STAMP ACT, 1879, s. 26, 31 C. 807=8 C.W.N, 667.

"Claiming under document"—*See* REGISTRATION ACT, 1908, s. 73, 1 A. 318, F.B.

"Clear and positive proof"—*See* LIMITATION ACT, 1908, s. 19, 3 B.L.R. P.C. 37=12 W.R. P.C. 36=13 M. I. A. 37.

"Collection of assets"—*See* ACT II OF 1874, s. 54, 25 C. 65.

'Collector' in Act I of 1894, means the Collector of a District, and includes a Deputy Commissioner and any Officer empowered by the Local Government to perform the functions of a Collector under the Act—*See* ACT I OF 1894, ss. 3, 9 and 11, 8 O.C. 118.

"Collusion"—Petition for dissolution of marriage—Indian Divorce Act, s. 13.—*See* ACT IV OF 1869, s. 13, 11 C. 651.

"Compartment"—*See* ACT IX OF 1890, s. 110, 1 Bom. L.R. 688.

"Compensation"—*See* LIMITATION ACT, 1908, art. 116, 3 M. 76.

"Compensation"—*See* LIMITATION ACT, 1908, arts. 116, 89, 90, 12 C. 357.

"Composition deed"—*See* REGISTRATION ACT, 1908, s.17 (*e*), 6 Bom. L.R. 296=28 B. 364.

"Conclusive and final evidence of the liability"—*See* BOM. ACT I OF 1880, ss. 17, 20, 21, 22 18 B. 133=P. J. 1893, 42.

"Conclusive proof"—*See* ACT X OF 1873, s. 11, 8 Bom. L.R. 19=1 M.L.T. 63.

"*Concurrent jurisdiction*" *meaning of.*—"Concurrent jurisdiction" means "Concurrent, as regards pecuniary limit as well as the subject matter". RUN BAHADUR SINGH v. LUCHO KOER, **11 C. 301, P C.=12 I.A.23=4 Sar. 602,** (*on appeal from*, 6 C. 406). [*F.*, 23 C. 415, 3 C. W.N. 202, 170 P.L.R. 1901=68 P.R. 1901, 29 M. 65; *R.*; 9 B. 75, 14 B. 206, 18 A. 59; 25 C. 571, 24 B. 456.]

Words and Phrases—*continued.*

"Constitute a reserved forest"—*See* ACT VII OF 1878, s. 4, 7 Bom. L.R. 496.

'Contentious suit'—*See* LIS PENDENS, 31 C. 658, 31 C. 745.

"Contract"—*See* LIMITATION ACT, 1908, arts. 113 and 144, 23 M. 593=10 M.L.J. 208.

"Contract to the contrary"—*See* TRANSFER OF PROPERTY ACT, 1882, s. 82, 24 M. 85.

"Conversion"—What amounts to—"Wrongful conversion," suit for recovery of damages on account of—Damages how assessed—*See* DAMAGES—MEASURE AND ASSESSMENT, A. W.N. 1885, 200.

"Conveyances" — *See* BELCHAMBER'S RULES AND ORDERS, 16 C. 330.

"Conveyed in trust"—*See* LIMITATION ACT, 1908, s. 10 and art. 134, 1 B. 269.

"Co-sharer in the holding" in ss. 46 and 70 of the Central Provinces Tenancy Act—*See* C. P. ACT XI OF 1898, s. 70, 1 N.L.R. 178.

"Co-sharers"—*See* U. P. ACT XIX OF 1873, ch. IV, A.W.N. 1889, 169.

"*Court*" *meaning of.*—'Court' in s. 208 of Act VIII of 1859, is limited to the Court which passes the decree. SHEO NARAIN SINGH v. HURBUNS LALL, **14 W.R. 65=5 B.L.R. 497.**

"Court"—*See* EXECUTION OF DECREE—MISCELLANEOUS, 14 C.W.N. 799=12 C.L.J. 45=6 Ind.Cas. 801=11 Cr.L.J. 407=37C. 642.

"Court of competent jurisdiction"—*See* RES JUDICATA—COMPETENCY OF COURT, 12 M. 223.

"Court of Small Causes"—*See* PROVINCIAL SMALL CAUSE COURTS ACT, 1887, s. 35, 31 C. 1057.

"Court of Wards"—'Minor under the jurisdiction of the Court of Wards,' meaning of—*See* ACT IX OF 1875, 3 M. 11.

"Creditors"—*See* TRANSFER OF PROPERTY ACT, 1882, s. 53, 5 Bom. L.R. 255.

"Cultivator"—*See* STAMP ACT, 1879, sch. II, art. 13 (*b*), 15 B. 73.

"Cultivator"—*See* STAMP ACT, 1879, sch. II, art. 13 (*b*) & (*c*), 5 A. 360=A.W.N. 1883, 113.

"Current year"—*See* BEN. ACT XI OF 1859, ss. 5, 33, 7 C.W.N. 377.

"Damage"—*See* CIV. PRO. CODE, 1908, O. XXXIX, r. 1, A.W.N. 1887, 42

"*Dasi*"—*Hindu law—Dasi, meaning of in Texts of Hindu Law.*—Although the primary meaning of the word "dasi" was a slave, it included also a concubine or a woman of the servile class in a secondary sense, and an unmarried Sudra woman kept as a continuous concubine came within its scope. KRISHNAYYAN v. MUTTUSAMI, **7 M. 407.** [*R.*, 6 C. P.L.R. 144, 15 M. 307.]

Words and Phrases—*continued.*

"Date of applying"—*See* LIMITATION ACT, 1908, art. 182—PERIOD FROM WHICH LIMITATION BEGINS TO RUN, 1 A. 580, F.B.

"Date of decree"—*See* BEN. ACT VIII OF 1885, art. 6, sch. III, 22 C. 644.

"Date of decree"—*See* LIMITATION ACT, 1908, ART. 182—PERIOD FROM WHICH LIMITATION BEGINS TO RUN, 25 C. 109.

"Date of payment"—*See* INTEREST—SPECIAL CASES, 5 C.W.N. 653.

"Date of payment"—*See* MORTGAGE—CONSTRUCTION OF MORTGAGE DEEDS, 14 C. W.N. 125=5 Ind. Cas. 61.

"Date of sale"—*See* BEN. ACT VIII OF 1885, s. 169, sub-s. 1, cl. (*c*), 7 C.W.N. 552.

"Date of sale"—*See* CIV. PRO. CODE, 1908, O. XXI, r. 89, 29 C. 626=6 C.W.N. 776.

"Date of the sale"—*See* LIMITATION ACT, 1908, art. 138, 17 M. 89=3 M.L.J. 267.

"Date of sale"—*See* SALE—SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE, 6 C.W.N. 776.

"Dawanni"—*See* GRANT--MISCELLANEOUS, 27 C. 156, P.C.=26 I.A. 216=4 C.W.N. 274.

"Days" in s. 55 of the Madras District Municipalities Act—*See* MAD. ACT IV OF 1884, s. 55, 16 M.L.J. 101=29 M. 329.

"Debt"—*See* LIMITATION ACT, 1908, s. 19, 4 C. 708.

"Debt" in s. 20, if includes judgment-debt—*See* LIMITATION ACT, 1908, ss. 19, 20, 6 C. W.N. 766.

"Debt"—*See* LIMITATION ACT, 1908, s. 20, 2 C. 468.

"Debt"—*See* TRANSFER OF PROPERTY ACT, 1882, ss. 8, 130, 135, 17 M.L.J. 87=30 M. 235.

"Declare"—*See* REGISTRATION ACT, 1908, s. 17, (*b*) 5 B. 232.

"Decree"—*See* BEN. ACT VIII OF 1885, ss. 65, 188, 3 C.W.N. 747.

"Decree"—*See* BEN. ACT VIII OF 1885, ss. 162, 174, 3 C.W.N. 231.

"Decree"—*See* APPEAL—DECREES AND EXECUTION OF DECREES, 8 A. 82.

"Decree"—*See* APPEAL—ORDERS, 8 A. 108, F.B.

"Decree"—*See* APPEAL TO PRIVY COUNCIL—MISCELLANEOUS, 5 Bom. L.R. 348=27 B. 415.

"Decree"—*See* CIV. PRO. CODE, 1908, ss. 2, 47, A.W.N. 1890, 85.

"Decree"—*See* CIV. PRO. CODE, 1908, s. 2, O. XI, r. 21, 19 B. 307.

"Decree"—*See* CIV. PRO. CODE, 1908, ss. 109, 110, 4 O.C. 66.

Words and Phrases—*continued.*

"Decree"—*See* CIV. PRO. CODE, 1908, O. IX, r. 13, 25 C. 155=1 C.W.N. 652.

"Decree"—*See* EXECUTION OF DECREE—GENERAL, A.W.N. 1888, 82.

"Decree"—*See* LETTERS PATENT, HIGH COURT, 1865, Calcutta, cl. 12, 2 Ind. Jur.N.S. 280.

"Decree"—*See* PARTITION—MISCELLANEOUS, 6 O.C. 372.

"Decree"—*See* PRACTICE AND PROCEDURE, 3 B. 161.

"Decree"—*See* REGISTRATION ACT, 1908, s. 50, 6 C.P.L.R. 112.

"Decree for money"—*See* CIV. PRO CODE, 1908, O. XLI, r. 6, 25 C. 322, A.W.N. 1889, 139.

"Decree for the recovery of money"—*See* DECREE—DECREE, CONSTRUCTION OF, 4 A. 115, F B.=A.W.N. 1881, 146.

"Decree-holder"—*See* CIV. PRO. CODE, 1908, s. 2, 20 A. 539=A.W.N. 1898, 145.

"Decree-holder"—*See* CIV. PRO, CODE, 1908, s. 73, O. XXI, rr. 90, 92, 29 C. 548.

"Decree-holder"—*See* CIV. PRO. CODE, 1908, O XXI, r. 90, 4 C W.N. 542.

"Decree involving indirectly—Ten thousand rupees or upwards"—*See* CIV. PRO. CODE, 1908, s. 110, 24 A. 236=A.W.N. 1902, 46.

"Decree of Court"—*See* U.P. ACT XXII OF 1886, ss. 52, 71, A.W.N. 1893, 3.

"Decree passed against agriculturist"—*See* BOM. ACT XVII of 1879, s. 20, 5 B. 604.

"Decree passed *ex parte*"—*See* PROVINCIAL SMALL CAUSE COURTS ACT, 1887, s. 17, 2 C.W.N. 693.

"Default"—*See* BEN. ACT VIII OF 1869, s. 66, 1 A L J. 420, P.C=31 C. 901=6 Bom. L.R. 741=31 I.A. 195.

"Default"—*See* MAD. ACT VIII OF 1865, s. 10, 4 M. 167.

"Defaulting proprietor"—*See* SALE—SALE FOR ARREARS OF RENT—INCUMBRANCES, 21 C. 702.

"Defect"—*See* CIV. PRO. CODE, 1908, s. 105, 12 A. 200.

"Defects in the property"—*See* TRANSFER OF PROPERTY ACT, 1882, s. 55, 20 B. 522.

"Defect of jurisdiction"—*See* LIMITATION ACT, 1908, s. 14, 45 P.R. 1893.

"Defendant"—*See* ABATEMENT OF APPEALS, 7 A. 693, F.B.=A.W.N. 1885, 169.

"Defendant"—*See* CIV. PRO. CODE, 1908, O. XXII, r. 4, 11 C. 694.

"Defendant"—*See* LIMITATION ACT, 1908, s. 2, art. 144, 7 Bom. L.R. 135.

'Defendant'—*See* LIMITATION ACT, 1908, art. 171, 10 B. 663.

Words and Phrases—*continued.*

"Defendant"—*See* LIMITATION ACT, 1908, arts. 171, 172, 12 C. 590, F.B.

Defined—*See* CAUSE OF ACTION, 31 C. 274=8 C.W.N. 207.

"Definite share" in first part of cl. (*a*), sub-s. (v), s. 7 of the Court Fees Act, does not mean definite share separately assessed with revenue—*See* COURT FEES ACT, 1870, s. 7, sub-s. V, cls. (*a*) and (*d*), 12 C.W.N. 990.

"Delivery"—*See* ACT IX OF 1890, ss. 47, 54, 72, 31 C. 951=8 C.W.N. 725.

"Demand," meaning of. "Demand" in cl. I, s. III, Ch. II, p. 23 of Board's Rules means current, and not gross demand, which includes arrears. **Rev. Cir. No. 3, 23 W.R. Rev. Cir. p. 32.**

"Denial of execution"—*See* REGISTRATION ACT, 1908, ss. 35, 73, 76, 77, 25 C. 93.

"Dependent member"—*See* HINDU LAW—MAINTENANCE, 29 C. 557=6 C.W.N. 530.

"Deposit"—Whether implies deposit of specific property returnable in specie—*See* DEPOSIT IN COURT, 6 C.L.J. 535.

"Deposit"—*See* LIMITATON ACT, 1908, art. 60, 6 C.L.R. 470, 15 C.P.L.R 147.

"Deposit"—*See* LIMITATION ACT, 1908, arts. 60, 127, 10 A. 109=A.W.N. 1888, 8.

"Deposit"—*See* LIMITATION ACT, 1908, arts. 145, 148, 5 B.L.R. 396=16 W.R. 164, Note.

"Descendants"—*See* HINDU LAW—WILL, 1 M.H.C. 400.

"Destruction"—*See* ACT IX OF 1890, s. 75, 19 B. 159.

"Deterioration"—*See* ACT IX OF 1890, s. 75, 19 B. 159.

"Determinable"—*See* SUITS VALUATION ACT, 1887, s. 8, 20 B. 265.

"*Determination.*"—The word "determination" in the Charters of Madras and Bombay is equivalent to the "decree or decretal order" of the Bengal Charter. NATHOOBHOY RAMDASS v. MOOLJEE MADOWDASS, **2 M I A. 169=3 Moo. P.C. 87=1 Sar. 198.**

"Determination"—*See* BOMBAY ACT V OF 1879, ss. 119, 121, 10 B 456.

"Devolution of interest"—*See* CIV. PRO. CODE, 1908, O. XXII, r. 10, 6 Bom. L.R. 995=30 B. 250, 28 C. 171=5 C W.N. 307.

"Dharm"—*See* MAHOMEDAN LAW—WILL, 1 B.H.C. 71.

"Dharma"—*See* WILL—CONSTRUCTION, 2 M.L T. 198=17 M L.J. 379=30 M. 340.

"Digar dawada"—*See* VENDOR AND PURCHASER—GENERAL, 111 P.R. 1908.

"Direct interest"—*See* RIGHT OF SUIT—TRUSTS, SUITS RELATING TO, 15 B. 612.

Words and Phrases—*continued.*

"Direction for payment on specified dates" what amounts to—*See* LIMITATION ACT, 1908, ART. 182—MISCELLANEOUS, A. W. N. 1882, 53.

"Disallowed"—*See* CIV. PRO. CODE, 1908, O. XXI, r. 92, 11 C. 287.

"Discloses himself"—*See* CONTRACT ACT, 1872, s. 231, 6 Bom. L.R. 731.

"Discontinuance"—*See* LIMITATION ACT, 1908, art. 142, 6 C. 311=7 C.L.R. 181, 1 C. W.N. 277.

"Dismissal of suit in its present form"—*See* MISJOINDER—GENERAL, 8 A. 282=A. W. N. 1886, 119.

"Dismissed"—*See* EXECUTION OF DECREE — APPLICATION FOR EXECUTION AND POWERS OF COURT, 15 A. 84=A.W.N. 1893, 36, F.B.

"Dispute"—*See* BEN. ACT VIII OF 1885, ss. 104, 105, 106, 107, 23 C. 257.

"Distant kindred"—*See* MAHOMEDAN LAW —INHERITANCE, 29 C. 738.

"Distinct subjects"—*See* COURT FEES ACT, 1870, s. 17, 1 A. 552, F.B., 2 A. 676, F.B., 2 A. 682, F.B.

"District Judge"—*See* CIV. PRO. CODE, 1908, O. XLI, r. 20, 8 B.L.R. 180=16 W.R. 235.

"Disturbance of easements"—*See* EASEMENTS ACT, 1882, 7 Bom.L.R. 825=30 B. 319.

"Division"—*See* WILL — CONSTRUCTION, 6 A. 583=A.W.N. 1884, 194.

"Domestic servant"—*See* WILL — CONSTRUCTION, 8 B.L.R. 244, 9 B.L.R. Ap. 4.

"Done or intended to be done"—*See* ACT III OF 1897, s. 4, 31 C. 829=8 C.W.N. 681.

"Drain" — *See* BOM. ACT III OF 1888, ss. 222 and 504, 9 Bom. L.R. 1321.

"Drawer" — *See* NEGOTIABLE INSTRUMENTS ACT, 1881, s. 64, 120 P.L.R. 1903=60 P.R. 1903.

"Due course of law" —*See* SPECIFIC RELIEF ACT, 1877, s. 9, 7 Bom. L.R. 12=29 B. 213.

"Due date of draft" — *See* LIMITATION — GENERAL, 54 P.W.R. 1908=127 P.L.R. 1908.

"Due execution"—*See* WILL—EXECUTION, 21 C. 279.

"Dues"—*See* SMALL CAUSE COURT—MOFUSSIL, JURISDICTION OF—GENERAL, 8 M. L.J. 83.

"Duly stamped"—*See* STAMP ACT, 1879, ss. 3 (10), 61, 18 C. 39.

"Duly stamped"—*See* STAMP ACT, 1899, s. 35, 6 Bom. L.R. 699.

"*During the suit*"—*Act* XV *of* 1865, *s.* 33.—The words "during the suit" in s. 33, Act XV of 1865 may be taken to include the period up to the making of a final or absolute decree. HIRABAI v. DHUNJIBHOY BOMANJI, **17 B. 146.**

Words and Phrases—*continued.*

"Dwell"—Meaning, scope and construction of—*See* JURISDICTION—CAUSES OF JURISDICTION, 18 B. 290.

'Dwell' as used in art. 12 of the Letters Patent—*See* LETTERS PATENT, HIGH COURT 1865—MADRAS, cl. 12, 1 M.L.T. 71=16 M.L. J. 238=29 M. 239.

"Dwelling"—*See* JURISDICTION—CAUSES OF JURISDICTION, 14 B. 541.

"Dwelling"—*See* SMALL CAUSE COURT, MOFUSSIL, JURISDICTION OF—GENERAL, 2 M.H.C. 304.

"Dwelling house"—*See* BEN. ACT XI OF 1859, s. 37, 3 C.W.N. 212.

"Early January" in contracts—*See* CONTRACT—GENERAL, 9 Ind. Cas. 460.

"Ejectment"—*See* EJECTMENT, SUIT FOR, 2 C.W.N. 229.

"Ekjaddi" — *See* PRE EMPTION — CONSTRUCTION OF WAJIB-UL-ARZ, 23 A. 32=A.W.N. 1900, 188.

"Election"—*See* BOM. ACT III OF 1888, s. 33, 9 Bom. L.R. 417=31 B. 604.

"Engagement"—*See* BOM. ACT XVII OF 1879, s. 3 (*w*), 2 Bom. L.R. 795=25 B. 244.

"Enriched"—*See* HINDU LAW—INHERITANCE, 4 A. 243=A.W.N. 1882, 30.

"Entire estate"—*See* MAD. REG. XXV OF 1802, s. 3, 26 M. 521=13 M.L.J. 139.

"Error"—*See* CIV. PRO. CODE, 1908, s. 105, 12 A. 200.

"Established"—*See* ST. 11 AND 12, VIC., C. 21, s. 26, 1 C.W.N. 328.

"Established usage"—*See* BEN. ACT VIII OF 1885, s. 53, 15 C. 714, 21 C. 132.

"Estate"—*See* BEN. ACT XI OF 1859, s. 6, 13 C. 208.

"Estate"—*See* BEN. ACT XI OF 1859, ss. 37, 52, 14 C. 440.

"Estate" —*See* PARTITION — RIGHT TO PARTITION, 10 C. 435.

"Every toddy-producing tree"—*See* BOM. ACT V OF 1878, ss. 14, 20, 6 B. 398.

"Exchange"—*See* PUN. ACT XXVIII OF 1868, s. 7, 124 P.R. 1884.

"Execution"—*See* CIV. PRO. CODE, 1908, O. XLI, r. 5, 5 C.W.N. 781.

"Executor according to the tenor" — *See* PROBATE AND ADMINISTRATION ACT, 1881, ss. 6 and 7, 1 N.L.R. 164.

"Ex parte decree" —*See* CIV. PRO. CODE, 1908, O. IX, r. 13, O. XI, r. 21, 2 C.W.N. 676.

"Fails in the suit"—*See* PAUPER SUITS, 21 M. 113=8 M.L.J. 4.

"Family"—*See* ACT XXXV OF 1858, s. 13, 23 C. 512.

"Family"—*See* ACT IV OF 1893, 7 Ind. Cas. 436=12 C.L.J. 525.

"Family"—*See* HINDU LAW—WILL, 4 C. W.N. 671, Note.

Words and Phrases—*continued.*

"Family necessity"—*See* HINDU LAW—ALIENATION, 2 B. 666.

"Fasli year"—*See* DEED—CONSTRUCTION OF DEEDS, A.W.N. 1893, 123.

"Favourable rent"—*See* MAD. ACT V OF 1884, ss. 64, 73, 23 M. 268.

"Final"—*See* BEN. ACT I OF 1895, ss. 19, 32, 33, 30 C. 619=7 C.W.N. 433.

"Final"—*See* CIV. PRO. CODE, 1908, s. 104, O. XLIII, r. 1, 13 M.L.J. 497.

"Final"—*See* CIV. PRO. CODE, 1908, OXLVII, rr. 7, 9, 15 C. 432.

"Final and conclusive"—*See* BEN. ACT VI OF 1870, ss. 58, 61, 11 C 632.

"*Final decree*"—*Meaning.*—The words "final decree herein" in an order were held to mean the decree in the suit and not in the appeal. HIRABAI v. DHUNJIBHOY BOMANJI, **17 B. 146.**

"Final decree"—*See* ACT XV OF 1865, s. 33, 17 B. 146.

"Final decree"—*See* APPEAL TO PRIVY COUNCIL—CASES WHERE APPEALS LIE OR NOT, 15 B. 155, P.C.=18 I.A. 6.

"Final decree"—*See* CIV.PRO.CODE, 1908, O. XLI, r. 23, s. 109, 1 O.C. 205.

"Final decree"—*See* KUMAON RULES, 1894, r. 17, 1 A.L.J. 29=A.W.N. 1904, 49.

"Final decree of appellate Court"—*See* LIMITATION ACT, 1908, ART. 182—PERIOD FROM WHICH LIMITATION BEGINS TO RUN, 23 M. 60=9 M.L.J. 284.

"Finally disposing of the matter"—*See* BOM. ACT XVII OF 1879, ss. 41, 43, 44, 9 B. 15.

"Fixtures"—*See* LANDLORD AND TENANT—MISCELLANEOUS, 29 B. 323.

"For any other sufficient reason"—*See* CIV. PRO. CODE, 1908, O. XV, r. 4, s. 114, O. XLVII, r. 1, A.W.N. 1887, 105.

"Fordable"—*See* ALLUVION—FORMATION OF CHURS OR ISLANDS, 6 B.L.R. 343=14 W. R. 352.

"Foreclosure" in the Punjab—*See* MORTGAGE—REDEMPTION, 137 P.W.R. 1908.

"Foreigner"—*See* FOREIGNERS, 29 C. 509 =6 C.W.N. 829.

"Former part of this section"—*See* REGISTRATION ACT, 1908, s. 50, 9 M. 119.

"For the purposes of execution"—*See* PRESIDENCY SMALL CAUSE COURTS ACT, 1882, s. 28, 4 C.W.N. 470.

"For the purposes of execution"—*See* SMALL CAUSE COURT, PRESIDENCY TOWNS, JURISDICTION OF—GENERAL, 26 C. 778=4 C.W.N. 590.

"For the time being"—*See* CIV.PRO. CODE, 1908, O. XLV, r. 15, A.W.N. 1887, 60.

"For the time being"—Costs awarded by decree of Privy Council, rate of exchange in

Words and Phrases—*continued.*

estimating—*See* EXECUTION OF DECREE—PRIVY COUNCIL, EXECUTION OF ORDERS AND DECREES OF, 8 A. 650=A.W.N. 1886, 249.

"For the time being"—*See* EXECUTION OF DECREE—PRIVY COUNCIL, EXECUTION OF ORDERS AND DECREES OF, 23 C. 357.

"Fraud"—*See* BELCHAMBERS RULES AND ORDERS, rr. 615, 617, 28 C. 272=5 C.W.N. 337.

"From son to grandson" in the will of a Hindu—*See* HINDU LAW—WILLS, 28 M. 363 =15 M.L.J. 299.

"From the date of such judgment"—*See* BEN. ACT VIII OF 1869, s. 58, 7 C. 127=8 C. L.R. 409.

"From time to time, appoint"—See PROBATE AND ADMINISTRATION ACT, 1881, s. 98, 25 C. 250=1 C.W.N. 646

"Full Customary rates."—*See* LEASE—CONSTRUCTION OF LEASE, 2 B.L.R.A.C. 265 =11 W.R. 164.

"Gaddi nashini"—*See* U. P. ACT I OF 1869, ss. 8, 22, cl. 11, 8 Ind. Cas. 422.

"Gaming or wagering"—*See* CONTRACT ACT, 1872, s. 30, 3 Bom. L.R. 476.

"Gaon"—*See* PRE-EMPTION—CONSTRUCTION OF WAJIB-UL-ARZ, A.W.N. 1905, 115= 2 A.L.J. 313=27 A. 602.

"Given"—*See* STAMP ACT, 1879, art. 44, cl. (*a*), 10 C. 274.

"Good faith"—*See* LIMITATION ACT, 1908, ss. 10 and 134, 1 B. 269.

"Good faith"—*See* TRANSFER OF PROPERTY ACT, 1882, s. 53, 13 C.P.L.R. 180.

"*Goods.*"—A Government currency note is not "goods" within the meaning of the Contract Act. *In the matter of* CAPTAIN MICHELL, **1 C L.R. 339.** [*R.*, 5 Ind. Cas. 202.]

"Grade"—*See* CIV. PRO. CODE, 1908, s. 63, 19 B. 127.

"Granted"—*See* CIV. PRO. CODE, 1908, s. 48, O. XXI, rr. 10, 21, 8 C. 297=10 C.L.R. 111.

"Granted"—*See* EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWERS OF COURT, 8 A. 301=A.W.N. 1886, 97.

"Granting application"—*See* CIV. PRO. CODE, 1908, O. XXI, rr. 10, 21, s. 48, 16 C. 744.

"Grant of money or land revenue"—*See* ACT XXIII OF 1871, ss. 3, 4, 5 B. 408, P.C.= 8 I.A. 77=4 Sar. 230.

"Had."—*See* BEN. ACT X OF 1859, s. 92, 4 B.L.R. F.B. 82=13 W.R.F.B. 3.

"Hamesha" (always or for ever).—*See* DEED—CONSTRUCTION OF DEEDS, 23 A. 324=11 M.L.J. 160=28 I.A. 65, P.C.

"Hamesha" always or for ever—*See* WILL—CONSTRUCTION, 11 M.L.J. 160, P.C.=23 A. 324=28 I.A. 65.

Words and Phrases--*continued.*

"Haqiyat"—*See* CIV. PRO. CODE, 1908, O. XX, r. 6, s. 152, 24 P.R. 1911=56 P.W.R. 1911.

"Has been heard and finally decided by such Court"—*See* CIV. PRO. CODE, 1908, s. 11, O. XX, r. 5, 4 M. 134.

"Has been treated"—*See* CIV. PRO. CODE, 1908, O. XXI, r. 95, 17 B. 228.

"Head of the office"—*See* COURT FEES ACT, 1870, ss. 4, 28, 12 A. 129, F.B.=A.W.N. 1890, 39.

"Heirs"—*See* HEIRS, 4 M. 338.

"Heirs"—*See* IMPARTIBLE ESTATE, 2 M. 128=7 I.A. 38=6 C.L.R. 152, P.C.

"Heirs"—*See* SANAD, 6 C.L.R. 153, P.C.=2 M. 128=7 I.A. 38.

'Heirs'—*See* TRUST, 9 C.W.N. 817, P.C.=2 C.L.J. 57=8 O.C. 270=27 A. 383, P.C.=15 M.L.J. 327=7 Bom. L.R. 850=3 A.L.J. 64=32 I.A. 135.

"Heirs of my property"—*See* HINDU LAW—WILL, 11 B. 69.

"Hereby"—*See* PROBATE AND ADMINISTRATION ACT, 1881, ss. 86, 90, 28 C. 149=5 C.W.N. 443.

"Hereditary interest"—*See* BOM. ACT III OF 1874, s. 4, 21 B. 787.

"Hereditary office"— *See* BOM. ACT III OF 1874, s. 4, 21 B. 733.

"High Court"—*See* PROBATE AND ADMINISTRATION ACT, 1881, ss. 50 and 87, 5 C.W.N. 377.

"Hindu"—*See* PROBATE AND ADMINISTRATION ACT, 1881, 135 P.L.R. 1903, P.C.=84 P.R. 1903.

"Hissadaran Shikmi"—*See* PRE-EMPTION—CONSTRUCTION OF WAJIB-UL-ARZ, 23 A. 260=A.W.N. 1901, 63.

"Holder"—*See* BEN. ACT VI OF 1876, ss. 3, 8, 27 C. 462=4 C.W.N. 158.

"Holder"—*See* BEN. ACT IX OF 1880, s. 56, 10 C. 743.

"Holder" — of shares—*See* COMPANY — RIGHTS OF SHARE-HOLDERS, 19 B. 1, P.C.=21 I. A. 139.

"Holder of the village"—*See* BOM. ACT V OF 1879, s. 216, 18 B. 525.

"Holding"—*See* BEN. ACT VIII OF 1885, s. 3, cl. 9, 25 C. 917, Note=1 C.W.N. 521.

"Holding"—*See* BEN. ACT VIII OF 1885, s. 30, 2 C.W.N. 680.

"Holding"—*See* BEN. ACT VIII OF 1885, ss. 30, 178, 25 C. 917=2 C.W.N. 44.

"House"—*See* ACT IV OF 1893, 7 Ind. Cas. 436=12 C.L.J. 525.

'House,' meaning of, in s. 49 of Act I of 1894—*See* ACT I OF 1894, s. 49, 9 O.C. 311.

"Idiot"—*See* HINDU LAW—INHERITANCE, 12 A. 530=A.W.N. 1890, 110.

Words and Phrases—*continued.*

"Illegally" *See* CIV. PRO. CODE, 1908, s. 100, 8 A. 111, F.B.=A.W.N. 1886, 28.

'Illegally enforced'—*See* U. P. ACT XXII OF 1886, ss. 17, 108 (cl. 9), 8 O.C. 200.

'*Immoveable property,' meaning of.*— The meaning of the expression "immoveable property" as used with regard to Hindu law, discussed. BALVANTRAV *alias* TATIAJI BAPAJI v. PURSHOTAM SIDHESHVAR, **9 B.H.C. 99.** [*Appr.*, 1 B.H.C. 281; *R.*, 21 B. 170, 23 B. 22.]

"Immoveable property"—*See* HINDU LAW—GENERAL, 5 B. 322.

"Immoveable property"—*See* LIMITATION ACT, 1908, art. 144, 13 B.L.R. 254, P.C.=21 W.R. 178=10 B.H.C. 281=1 I.A. 34.

'Imprisonment' in s. 359 of the Code of Civil Procedure—*See* INSOLVENCY—INSOLVENCY UNDER CIV. PRO. CODE, 3 L.B.R. 172.

"Improper means"—*See* CIV. PRO. CODE, 1859, s. 272, 6 B.L.R. 174=14 W.R. 363.

"Inability to sue"—*See* LIMITATION ACT, 1908, ss. 6, 8 and 9, 6 Bom. L.R. 639=29 B. 68.

"In accordance with law"—*See* LIMITATION ACT, 1908, ART. 182—MISCELLANEOUS, 20 C. 388.

"In a Court of jurisdiction competent to try such subsequent suit" in s. 13 of the Civ. Pro. Code, 1882—*See* RES JUDICATA—COMPETENCY OF COURT, 10 C. 697.

"Inam"—*See* MAHOMEDAN LAW—WAKF, 6 W.R. P.C. 3=2 M.I.A. 390.

"Incapable of giving evidence"—*See* EVIDENCE ACT, 1872, s. 33, 4 C.L.R. 504.

"*Includes*"—"*Means*"—*Scope of expressions.*—The use of the word "includes" shows, that the term indicated is not by any means intended to be exhaustive. When the Legislature intends to speak exhaustively it uses the word "mean" or "means." BALVANTRAV *alias* TATIAJI BABAJI v. PURSHOTAM SUDHESHVAR, **9 B.H.C. 99.** [*R.*, 16 B. 283, 16 B. 537.]

"Income"—*See* MAD. ACT IV OF 1884, sch. A. 27 M. 547.

"Incumbrance"—*See* BOM. ACT VI OF 1888, s. 31, 1 Bom. L.R. 154.

"Incumbrance" *See* INCUMBRANCE, 3 C.W.N. 13.

"In future" in a *Wajib-ul-arz*, relating to pre-emption, construction of the words—*See* PRE-EMPTION— CONSTRUCTION OF WAJIB-UL-ARZ, 2 A.L.J. 6=A.W.N. 1905, 16.

"Injury"—*See* LIMITATION ACT, 1908, arts. 2, 6, 7, 8, 9, 22, 24, 25, 40, 48, 49, 3 M.H.C. 165.

"Injury to personal property"—*See* LIMITATION ACT, 1908, arts. 2, 6, 7, 8, 9, 22, 24, 25, 40, 48, 49, 3 M.H.C. 165.

Words and Phrases—*continued.*

"Inquire summarily"—*See* ACT XL OF 1858, ss. 6, 9, 12 A.W.N. 1889, 170.

"*Instituted*," *meaning of.*—"Instituted" in s. 4 of Act XVII of 1879 does not mean "heard and determined." MANAJI v. NARAYAN RAO, **19 B. 46.**

"Instrument"—*See* GUARDIANS AND WARDS ACT, 1890, s. 39, 18 B. 375.

"In such case"—*See* REGISTRATION ACT, 1908, ss. 73 to 77, 24 A. 402=A.W.N. 1902, 99.

"Insufficient stamp"—*See* LIMITATION ACT, 1908, s. 3, 13 A. 305=A.W.N. 1891, 99.

"Intending to register"—*See* REGISTRATION ACT, 1908, ss. 31, 87, 6 B. 96.

"Intentionally"—*See* EVIDENCE ACT, 1872, s. 115, 20 C. 296, P.C.=19 I.A. 203.

"Interest in or charge upon the property"—*See* MORTGAGE—REDEMPTION, 5 C.W.N. 83.

"Interest in the estate of the deceased"—*See* PROBATE AND ADMINISTRATION ACT, 1881, s. 69, 28 C. 441.

"Intestate"—*See* U. P. ACT I OF 1869, s. 13 (1), 16 C. 556, P.C.=16 I. A. 53.

"In the meantime"—*See* LIMITATION ACT, 1908, arts. 145, 148, 6 M.H.C. 138.

"In trust for specific purpose"—*See* LIMITATION ACT, 1908, s. 10, 4 C. 807=4 C.L.R 193.

"Irregularity"—*See* CIV. PRO. CODE, 1908, s. 105, 12 A. 200.

"Issued"—*See* BEN. ACT X OF 1859, s. 92, 4 B.L.R. F.B. 82=13 W.R. F.B. 3.

"Istimrari"—*See* DEED—CONSTRUCTION OF DEEDS, A.W.N. 1900, 27.

"Istimrari" — *See* LEASE—CONSTRUCTION OF LEASE, 8 A. 569=A.W.N. 1886, 227, 5 B. L.R. 652=14 W.R. 107.

"Istimrari mokurari" — *See* GRANT—CONSTRUCTION, 30 C. 20=7 C.W.N. 314.

"Istimrari mokurari"—*See* LEASE—CONSTRUCTION OF LEASE, 30 C. 883.

"It shall be lawful" in s. 9—*See* ST. 11 AND 12, VIC. C. 21, s. 9, 4 B. 489.

"Jangad"—*See* GOODS DELIVERED, 20 B. 779.

"*Joint family property*," *meaning of*—*Limitation Act*, 1877, *art.* 127.—The words mean the property of a joint family, and not the joint property of the family. Thus the article would not apply where the property is joint, but the family is not. AMME RAHAM v. ZIA AHMAD, **13 A. 282, F.B.=A.W.N. 1891, 88.** [*R.*, 29 A. 308=A.W.N. 1907, 52=4 A.L.J. 209, 30 A. 324=A.W.N. 1908, 126=5 A.L.J. 352=4 M.L.T. 38.]

"Joint family property"—*See* LIMITATION ACT, 1908, art. 127, 1 M.L.J. 757, Note.

"Joint landlords"—*See* BEN. ACT VIII OF 1885, s. 188, 19 C. 593.

"Jointly interested"—*See* MAD. ACT V OF 1882, s. 33, 13 M. 322.

Words and Phrases—*continued.*

"Jote"—*See* BEN. ACT VIII OF 1869, s. 166, 8 C.W.N. 117.

"Judge of the Court of Small Causes" in sch. II, cl. 8 of Act IX of 1887 (Provincial Small Cause Courts), construction of—*See* PROVINCIAL SMALL CAUSE COURTS ACT, 1887, sch. II, cl. 8, 7 C.L.J. 407=35 C. 677.

"Judgment"—*See* MAD ACT VIII OF 1865, ss. 10, 69, 25 M. 453.

"Judgment"—*See* MAD. ACT VIII OF 1865, s. 69, 26 M. 518.

"Judgment" — *See* APPEAL — LETTERS PATENT, 25 M. 654=12 M.L.J. 34, 27 M. 340.

"Judgment"—*See* APPEAL — ORDERS, 11 M.L.J. 238.

"Judgment"—*See* CIV. PRO. CODE, 1908, O. XXI, rr. 58, 59, 62, s. 104, O. XLIII, r. 1, s. 105, 25 M. 555=11 M.L.J. 346.

"Judgment"— *See* LETTERS PATENT HIGH COURT, 1865—CALCUTTA, 5 C.W.N. 781.

"Judgment"— *See* LETTERS PATENT, HIGH COURT, 1865, CALCUTTA, cl. 12, 2 Ind. Jur. N.S. 280.

"Judgment"— *See* LETTERS PATENT, HIGH COURT, 1865, CALCUTTA, s. 15, 4 B.L. R. A.C. 10.

"Judgment"—*See* LETTERS PATENT, HIGH COURT—1865, MADRAS s. 15, 25 M. 406=12 M.L.J. 282, 26 M. 437, 24 M. 252, 24 M. 511, 26 M. 502, 27 M. 432.

"Judgment"— *See* LETTERS PATENT, HIGH COURT—N.W.P., 1865, A.W.N. 1888, 37.

"Judgment-debtor"—*See* BEN. ACT VIII OF 1885, s. 174, 15 C. 482.

"Judicial proceeding"—*See* EXECUTION OF DECREE—MISCELLANEOUS, 14 C.W.N. 799 =12 C.L.J. 45=6 Ind. Cas. 801=11 Cr. L.J. 407=37 C. 642.

"Judicial proceeding"—*See* SANCTION TO PROSECUTE, A.W.N. 1895, 145.

"Jurisdiction"—*See* APPELLATE COURT—POWERS OF APPELLATE COURT, 1 B.L.R.A. C. 155=10 W.R. 160.

"Jurisdiction"—*See* CIV. PRO. CODE, 1908, s. 99, 28 C. 324=5 C.W.N. 509.

"Jurisdiction"—*See* CIV. PRO. CODE, 1908, s. 115, 7 A. 345=A.W.N. 1885, 73.

"Jurisdiction"— Order amending decree under s. 206, High Court, whether could entertain application for revision of—*See* CIV. PRO. CODE, 1908, s. 115, 8 A. 519=A.W.N. 1886, 182.

"Jurisdiction competent to try"—*See* RES JUDICATA—COMPETENCY OF COURT, 16 A. 183=A.W.N. 1894, 18.

"Just cause"—*See* PROBATE AND ADMINISTRATION ACT, 1881, ss. 22, 41, 50, 85, 21 C. 195.

Words and Phrases—*continued.*

"Just cause"—*See* PROBATE AND ADMINISTRATION ACT, 1881, s. 50, expl. (4), 24 C. 95.

"*Kaimi*" — The word '*Kaimi*' does not import fixity of rent. FAZEL SHEIKH v. KERAMUDDI SHEIKH, **6 C.W.N. 916.**

"Kanam." — *See* MALABAR LAW—MORTGAGE, 5 M. 310.

"*Karabati.*"—Karabati means not only a male collateral but near male collateral. MUSSAMMAT JEWAN v. IBRAHIM, **196 P.R. 1889.**

"Karibi,"—*See* PRE-EMPTION—CONSTRUCTION OF—WAZIB-UL ARZ, 11 A. 41, F.B.=A.W.N. 1889, 1.

"Kasi"—*See* HINDU LAW—GIFT, 6 M. 319.

"Keeping silence" — *See* PRINCIPAL AND SURETY—DISCHARGE OF SURETY, 15 B. 585.

"Khalal"—*See* TRANSFER OF PROPERTY ACT, 1882, s. 68, cl. (*c*), A.W.N. (1905), 61=2 A.L.J. 241=27 A. 488.

"Khanadamad"—*See* CUSTOMS—PUNJAB—ALIENATION, 70 P.R. 1903=127 P.W.R 1908.

"Known co-sharers"—*See* BOM. ACT VI OF 1888, s. 12, 5 Bom. L.R. 937=28 B. 209.

"Kuch Hakiat"—*See* CUSTOMS—PUNJAB—ALIENATION, 133 P.R. 1890.

"Kudimiras" — *See* LANDLORD AND TENANT—MISCELLANEOUS, 8 M.L.T. 430=8 Ind. Cas. 158.

"Kul Malik"—*See* WILL—CONSTRUCTION, 8 Bom. L.R. 482.

"Kurnum" — The heirs of the preceding Kurnum—Meaning of—*See* MAD. REG. XXIX OF 1802, s. 7, 4 M.H.C. 234.

"Labham"—*See* WILL—CONSTRUCTION, 29 M. 155.

"*Land*"—Land includes land covered by a house. NARAYANAMMA v. KAMAKSHAMMA, **20 M. 21.**

"Land"—*See* ACT I OF 1894, s. 23, 28 C. 152=5 C.W.N. 349.

"Land"—*See* BEN. ACT X OF 1859, ss. 6, 23, 31 C. 937=8 C.W.N. 801.

"Land"—*See* BEN. ACT X OF 1859, s. 23, cl. 4, 28 C. 485=5 C.W.N. 840.

"Land"—*See* BEN. ACT IX OF 1879, ss. 6, 7, 10, 29 C. 638=7 C.W.N. 20.

"Land"—Land at one time agricultural and assessed with revenue of 9 pies—Purchase by vendee after it had been built over—Whether can be considered as "land" conferring right of pre-emption on vendee—*See* PUN. ACT IV OF 1872, ss. 12 and 15, 109 P.L.R 1908=78 P.W.R. 1908.

"Land"—*See* PUN. ACT XIII OF 1900, ss. 2 (3), 3 (2), 6 P.R. 1903, Rev.=52 P.L.R. 1904.

"Land"—*See* PUN. ACT XIII OF 1900, ss. 2 (3) and 9, 44 P.L.R 1904=11 P.R. 1904.

'Land' in s. 10 of the Punjab Laws Act—*See* PRE-EMPTION, RIGHT TO PRE-EMPT, 22 P.R. 1906=115 P.L.R. 1906.

Words and Phrases—*continued.*

"Land-holders"—*See* MAD. ACT VIII OF 1865, s. 1, 5 M.H.C. 208.

"Landlords"—*See* U.P. ACT XXII OF 1886, s. 127, 4 O.C. 24.

"Land revenue"—*See* BEN. ACT XI OF 1859, s. 2, 31 C. 256, P.C.=31 I.A. 52=8 C.W.N. 649.

"Land revenue"—*See* JURISDICTION OF CIVIL COURTS, 9 B. 462.

"Land suit"—*See* PUN. ACT XVIII OF 1884, s. 3, 31 P.R. 1901.

"Land suit"—*See* PUN. ACT XVIII OF 1884, s. 3 (2), 32 P.L.R. 1903.

"Land suit"—*See* APPEAL — MISCELLANEOUS, 64 P.R. 1902.

"Last preceding settlement"—*See* C.P. ACT XVII OF 1889, s. 3 (11), 11 C.P.L.R. 81.

"Lawaris"—*See* CUSTOMS—PUNJAB—INHERITANCE, 4 Ind. Cas. 555=66 P.W.R. 1909.

"Law in force"—*See* CIV. PRO. CODE, 1908, O. XXI, rr. 10, 21, s. 48, 9 M. 454.

"Lease not exceeding five years" — *See* REGISTRATION ACT, 1908, s. 17, 4 M. 381.

"Leave"—*See* BEN. ACT XI OF 1859, s. 37, cl. 4, 30 C. 498.

"Legal character"—*See* SPECIFIC RELIEF ACT, 1877, s. 42, 24 C. 107, 10 C.P.L.R. 1.

"Legally recoverable"— *See* EXECUTION OF DECREE—MODE OF EXECUTION, 15 A. 331=A.W.N. 1893, 120.

"Legally recoverable"—*See* SET-OFF, 7 Bom. L.R. 246=30 B. 173.

"Legal representative" — *See* CIV. PRO. CODE, 1908, s. 2, 8 C.W.N. 843.

"Legal representative"—*See* CIV. PRO. CODE, 1908, s. 50, 17 M. 186=4 M.L.J. 59.

"Legatee," meaning of, in s. 22 of Act I of 1869 (Oudh Estates)—*See* U.P. ACT I OF 1869, s. 22, 2 C.L.J. 194, P.C.=9 C.W.N. 1009=8 O.C. 317=15 M.L.J. 352=27 A. 634.

"Liable to be seized"—*See* CIV. PRO. CODE, 1908, O. XXI, r. 41, 17 B. 514.

"Liability"—*See* BEN. ACT III OF 1884, ss 113, 116, 21 C. 319.

"Litigating under the same title"—*See* RES JUDICATA—ADJUDICATION, 5 M. 239.

"Local Government" — *See* COURT OF WARDS, 7 A. 687=A.W.N. 1885, 227.

"Local Government"—*See* LOCAL GOVERNMENT, 9 B.L.R. 196, Note=14 W.R. 331.

"Lose"—*See* U.P. ACT XII OF 1881, s. 7, 7 A. 553, F.B.

"Loss"—*See* ACT IX OF 1890, s. 75, 19 B. 159.

"Made"—*See* AWARD, 8 A. 543=A.W.N. 1886, 179.

"Made" in s. 516, Civ. Pro. Code, means that the minds of the arbitrators have been declared. Such declaration requires authentication by signature. The same word, in s. 521,

Words and Phrases—*continued.*

does not mean delivery—*See* CIV. PRO. CODE, 1908, sch. II, rr. 3, 8, 10, 15, A.W.N. 1905, 47=27 A. 459=2 A.L.J. 201.

"Made"—*See* REVIEW—REVIEW BY JUDGE OTHER THAN JUDGE IN ORIGINAL CASE, 4 A. 278=A.W.N. 1882, 26.

"Madmen."—*See* HINDU LAW—INHERITANCE, 12 A. 530=A.W.N. 1890, 110.

"Mahal"—*See* PRE-EMPTION—GENERAL, 1 O.C. 45.

"Mahaz"—*See* ALLUVION—GENERAL, 45 P.R. 1888.

'*Mahsul*'—Standing crops—Punjab Land Alienation Act (XIII of 1900), s. 2 (3), cls. (*b*) and (*d*)—*See* PUN. ACT XIII OF 1900, s. 2, cl. 3 (*b* and *d*), 14 P.R. 1905=130 P.L.R. 1904.

"*Malak*"—*See* WILL—CONSTRUCTION, 2 Bom. L.R. 46.

"Male collaterals"—*See* PUN. ACT XXVIII OF 1868, s. 36, 82 P.R. 1883.

"Male issue"—*See* HINDU LAW—WILL, 8 B.L.R. 400.

"Male lineal descendants"—*See* PUN. ACT XXVIII OF 1868, s. 36, 34 P.R. 1883.

"Malice"—*See* MALICIOUS PROSECUTION, 24 A. 363=A.W.N. 1902, 92.

"Malik"—*See* HINDU LAW—GENERAL, 12 O.C. 157=2 Ind. Cas. 924.

"Malik" in wills—*See* HINDU LAW—WIDOW, 12 C.W.N. 231, P.C.=5 A.L.J. 67=18 M.L.J. 7=10 Bom. L.R. 259=7 C.L.J. 131=2 M.L.T. 144=30 A. 84.

"Malik"—*See* HINDU LAW—WIDOW, 10 Bom. L.R. 59=12 C.W.N. 231.

"Malik"—*See* HINDU LAW—WILL, 10 C. 342, 4 A.L.J. 68=A.W.N. 1907, 19=29 A. 217.

"Malik"—*See* WILL—CONSTRUCTION, 6 A.L.J. 420=31 A. 318=2 Ind. Cas. 474, 6 Ind. Cas. 141=12 C.L.J. 391.

"Malikana"—*See* BEN. ACT XI OF 1859, s. 2, 31 C. 256, P.C.=31 I.A. 52=8 C.W.N. 649.

"Manager"—"Trustee, manager or superintendent of a mosque"—*See* ACT XX OF 1863, ss. 14, 18, 8 C. 32=9 C.L.R. 433.

"Mark"—*See* SUCCESSION ACT, 1865, s. 50, 25 C. 911=2 C.W.N. 612.

"Market value"—*See* ACT I OF 1894, s. 23, 9 Bom. L.R. 1232, 10 Bom. L.R. 657.

"Market value at the time of awarding compensation"—*See* ACT X OF 1870, 15 B. 279.

"Masani"—*See* REGISTRATION ACT, 1908, s. 49, 83 P.R. 1891.

"Masonry building"—*See* BEN. ACT III OF 1899, ss. 3 (cl. 25), 351, 352 and sch. XVII, Part 3, 8 C.W.N. 487.

"Material irregularity"—*See* CIV. PRO. CODE, 1908, s. 115, 13 C. 225.

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"Material irregularity" meaning of—*See* CIV. PRO. CODE, 1908, O. XXI, rr. 54, 67, 68, 90, 5 M.L.J. 70.

"Material irregularity"—*See* SALE—SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE, A.W.N. 1891, 156.

"Matraka"—*See* DECREE—DECREE, CONSTRUCTION OF, A.W.N. 1898, 44.

"Matter directly and substantially in issue"—*See* CIV. PRO. CODE, 1908, s. 11, 25 C. 136.

"*May.*"—The word "may" in s. 23 of the Provincial Small Cause Courts Act is not mandatory. FATMA v. BANDHU LAL, **A.W.N. 1889, 4.** (A.W.N. 1888, 193, *R.*)

"May" in s. 140 of Indian Railways Act—Means "must"—*See* ACT IX OF 1890, s. 140, 12 C.W.N. 450=35 C. 194.

"May"—*See* BEN. ACT III OF 1884, s. 339, 17 C. 329.

"May"—*See* CONTRACT ACT, 1872, s. 265, 7 C. 157=8 C.L.R. 329.

"May"—*See* STATUTE 11 AND 12 VIC. C. 21, s. 49, 10 Bom. L.R. 345.

"May"—*See* STATUTE, CONSTRUCTION OF, 3 C. 47=4 I. A. 127, P.C.

"May"—*See* SUCCESSION ACT, 1865, ss 196, 229, 12 B.L.R. 423.

"May apply"—*See* JURISDICTION OF CIVIL COURTS, 4 A. 515=A.W.N. 1882, 121.

"May appoint"—*See* CERTIFICATES OF ADMINISTRATION—MISCELLANEOUS, 13 B. 37.

"May be presumed to have been made with such intent as aforesaid"—*See* TRANSFER OF PROPERTY ACT, 1882, s. 53, 22 C. 185.

"Member of the village community" if includes under-proprietary tenant—*See* U. P. ACT XVIII OF 1876, s. 9, cl. (3), 24 A. 420=A.W.N. 1902, 106.

"Mere forbearance,"—*See* CONTRACT ACT, 1872, ss. 134, 137, 24 A. 504=A. W. N. 1902, 166.

"Mesne profits"—*See* CIV. PRO. CODE, 1908, s. 2 (12), O. XX, r. 12, 22 A. 262=A.W.N. 1900, 57.

"Mesne profits"—*See* EXECUTION OF DECREE—MODE OF EXECUTION, 12 B. 416.

"Mesne profits"—*See* MESNE PROFITS—MODE OF ASSESSMENT, 2 Bom.L.R. 709.

"Might"—*See* RES JUDICATA—MATTERS IN ISSUE, 9 Bom. L.R. 1020.

"Miscarriage of justice"—*See* PRESIDENCY SMALL CAUSE COURTS ACT, 1882, ss. 38, 69, 17 B. 14.

"Miscellaneous application"—*See* BOM. ACT XIV OF 1869, s. 16, 16 B. 277.

"Miscellaneous proceedings"—*See* ACT XXIII OF 1861, s. 38, 1 A. 178, F.B.

"Misconduct"—*See* ARBITRATION—GENERAL, A.W.N. 1889, 124.

Words and Phrases—*continued.*

"Misconduct" —*See* CIV. PRO. CODE. 1908, sch. II, r. 15, 9 A. 253, 30 C. 397=7 C.W.N. 545.

"Mistake" — *See* BELCHAMBERS' RULES AND ORDERS, rr. 615, 617, 28 C. 272=5 C.W. N. 337.

"Mofussil"—*See* BEN. REG. VIII OF 1819, s. 8 (2), 14 C. 365, P.C.=14 I.A. 30.

"*Mokurari*"—*Signification* —Though "mokurari" might import perpetuity, it is not the necessary meaning of the word. BILASMONI DASI v. RAJA SHEOPERSAD SINGH, **8 C. 664, P.C.=11 C.L.R. 215=9 I.A. 33=4 Sar. 325.** (*on appeal from* 5 C. 543.) [*R.*, 12 C. 117,8 O.C. 61; *D.*, 3 O.C. 55.]

"Mokurari"—*See* BEN ACT VIII OF 1885, ss. 11, 18, 74 and 179, 12 C.W.N. 175.

"Mokurari"—*See* DEED—CONSTRUCTION OF DEEDS A.W.N. 1900, 27.

"Mokurari"—*See* LEASE—CONSTRUCTION OF LEASE, 5 C. 543=5 C L.R. 138, 15 C. 342, P.C.

"Mokurari"—*See* SANAD, 5 M.I.A. 467.

"Mokuraree istimrari"—*See* LEASE, CONSTRUCTION OF LEASE, 3 B.L.R.A.C. 226=12 W.R. 3.

"Money grant"—*See* JURISDICTION OF CIVIL COURTS, 18 B. 516.

"Month"—*See* BEN. ACT VIII OF 1869, 2 C.L.R. 265.

"More persons than one"—*See* CIV. PRO. CODE, 1908, s. 73, 5 B. 198.

"Mortgage"—*See* MORTGAGE—GENERAL, 7 A. 258, F.B.=A W.N. 1885, 8.

"Mortgagor's legal representative" — *See* MORTGAGE—FORECLOSURE, 1 A. 499.

"Mosque"—"Trustee. Manager or Superintendent of a mosque"—*See* ACT XX OF 1863, ss. 14, 18, 8 C. 32=9 C.L.R. 433.

"Mourasi" —*See* LEASE—CONSTRUCTION OF LEASE, 30 C. 883.

"Moveable property" —*See* CIV. PRO. CODE, 1908, O. XXI, rr. 46 and 54, 4 Bom. L.R. 18=26 B. 305.

"Moveable property"—*See* EXECUTION OF DECREE—MISCELLANEOUS, 5 B.L.R. 155=13 W.R. 401.

"Moveable property" —*See* LIMITATION ACT, 1908, art. 89, 24 A. 27=28 I.A. 227, P.C.

"My house" —*See* WILL—CONSTRUCTION, 31 C. 166=8 C.W.N. 273.

"My own grandsons being sons' sons" in the will of a Hindu—*See* HINDU LAW—WILL, 28 M. 363=15 M L.J. 299.

"Nadi Bharate"—*See* ALLUVION—CHANGE IN COURSE OF RIVERS, 3 B.L.R App. 116.

"Near co-sharer"—*See* PRE-EMPTION — RIGHT TO PRE-EMPT, A.W.N. 1882, 167.

"Nearer co-sharer"—*See* PRE-EMPTION—CONSTRUCTION OF WAJIB-UL-ARZ, 7 A. 478 =A.W.N. 1885, 85.

Words and Phrases —*continued.*

"Necessity"—*See* EASEMENTS ACT, 1882, s. 13, cls. (*a*), (*b*), (*c*), (*d*), 3 Bom. L.R. 601.

'New plaintiff' in s. 372 of Civ. Pro. Code—*See* LIMITATION ACT, 1908, s. 22, 9 C.W.N. 883.

"*Nis Santhana*"—Construction of the word 'Nis-santhana' means 'without offspring of both sexes.' GOUR MONEE DEBEA v. KRISHNA CHUNDER SANYAL, **4 C. 397.** (4 C. 23, P.C., *R.*)

"Not being a decree or order"—*See* REGISTRATION ACT, 1908, s. 50, 28 C. 139=5 C.W. N. 419.

"Not competent"—*See* EVIDENCE ACT, 1872, s. 44, 12 M. 228.

"Notice"—*See* ACT I OF 1894, s. 12, 7 Bom. L.R. 697=30 B. 275.

"Notification" — *See* BEN. ACT III OF 1884, s. 2, 20 C. 699, F.B.

"Not resident" in s. 37, Civ. Pro. Code—*See* CIV. PRO. CODE, 1908, O. III, r. 2, **2 A.L.J.** 626=A.W.N. 1905, 221=28 A. 135.

"Now due owing or payable"—*See* DEED —CONSTRUCTION OF DEEDS, 4 Bom. L.R. 839.

"Null and void"—*See* ST. 11 AND 12, VIC. CH. 21, s. 7, 27 M. 7.

'Object' in s. 23 of the Contract Act—*See* CONTRACT ACT, 1872, s. 23, 10 C.W.N. 755=33 C. 702.

"Objection"—*See* BEN. ACT VIII OF 1885, ss. 104, 105, 106, 107, 23 C. 257.

"Objection"—*See* APPEAL—OBJECTIONS BY RESPONDENTS, 2 Hay 79.

"Obstructed heritage"—*See* HINDU LAW—INHERITANCE, 27 M 300, F.B.

"Occupied"—*See* U.P. ACT XXII OF 1886, s. 127, 1 O.C. 28.

"Occupier"—*See* BEN. ACT IX OF 1880, ss. 5, 6, 72, 81, 5 C.L.J. 148=34 C. 257.

"Officer"—*See* ACT XII OF 1887, s. 36, 2 C. W.N. 127.

"Omit to sue"—*See* CIV. PRO. CODE, 1908, O. II, r. 2, 15 M. 296.

"On demand"—Limitation—*See* DEED—CONSTRUCTION OF DEEDS, 16 M.L. J. 364.

"Only"—*See* EVIDENCE ACT, 1872, s. 34, 45 P.R. 1899.

"Only"—Acknowledgment signed by one of several partners—*See* LIMITATION ACT, 1908, s. 21, cl. 2, 10 A. 418=A.W.N. 1898, 93.

"Oral" — *See* EVIDENCE—PAROL EVIDENCE, 22 M. 261=8 M.L.J. 196.

"Order" — *See* CIV. PRO. CODE, 1908, O. VII, rr. 7, 9, 57 P.R. 1892.

"Order"—*See* REGISTRATION ACT, 1908, s. 50, 6 C.P.L.R. 112.

"Order of relationship"—*See* PRE-EMPTION —MISCELLANEOUS, 74P.R. 1906=137 P.L. R. 1906.

Words and Phrases—*continued.*

"Original Civil Jurisdiction"—*See* JURISDICTION OF CIVIL COURTS, 24 C. 30=1 C.W.N. 8.

"Or otherwise" in s. 22 of the Bengal Tenancy Act, must be construed, "*Ejusdem generis*" and do not include the case of a holding reverting to the landlord on the failure of the tenant's heirs—*See* BEN. ACT VIII OF 1885, s. 22, 8 C.L.J. 324=13 C.W.N. 12=1 Ind. Cas. 155.

"Or their representative" in s. 244, Civ. Pro. Code—*See* CIV. PRO. CODE, 1908, s. 47, 8 O.C. 370.

"Or the like"—*See* BEN. ACT X OF 1859, s. 23, cl. 4, 28 C. 485=5 C.W.N. 840.

"Or the survivors or survivor of them"—*See* SUCCESSION ACT, 1865, ss. 90, 91, 26 M. 433.

"Other cases," in s. 372—*See* CIV. PRO. CODE, 1908, O. XXII, r. 73 (1), 10, 9 C.W.N. 171.

"Other cause of a like nature"—*See* LIMITATION ACT, 1908, s. 14, 8 A. 475=A.W.N. 1886, 233, 12 A. 207=A.W.N. 1890, 76, 22 A. 248, F.B.=A.W.N. 1900, 64.

Ought—in the Expl. 2, s. 13, Civ. Pro. Code, Construction of—Arrangement between widow and reversioner - Suit by creditor against reversioner—*See* RES JUDICATA—GENERAL, 20 C. 79, P. C.=19 I.A. 234.

Over-valuation—*See* SUITS VALUATION ACT, 1887, s. 11, cl. (1), 31 C. 849=8 C.W.N. 705.

"Owner"—*See* BEN. ACT IX OF 1880, s. 56, 10 C. 743.

"Owner of mines"—*See* BEN. ACT IX OF 1880, ss. 5, 6, 72, 81, 5 C.L.J. 148=34 C. 257.

"Parcel"—*See* BEN. ACT VIII OF 1885, s. 3, cl. 9, 25 C. 917, Note=1 C.W.N. 521.

"Parties"—*See* BEN. ACT VI OF 1871, s. 24, 7 A. 775, F.B.=A.W.N. 1885, 228.

"Parties"—*See* CIV. PRO. CODE, 1908, sch. II, r. 20, 8 A. 310=A.W.N. 1886, 107.

"Parties"—*See* PRACTICE AND PROCEDURE, 9 C. 604=13 C.L.R. 142.

"*Partition wall.*"—When open spaces are spoken of, "partition walls" do not mean blocks of buildings, but such walls as are used for partitioning open spaces. BOLYE CHUNDER SEN v. LALMONI DASI, **14 C. 797.**

"Part with"—*See* U.P. ACT XII OF 1881, s. 7, 7 A. 553, F.B.=A.W.N. 1885, 108.

"Party"—*See* CIV. PRO. CODE, 1908, s. 47, 15 B. 290.

"Passing of the Act"—*See* CIV. PRO. CODE, 1908, O. XXI, rr. 10, 21, s. 48, A.W.N. 1882, 2.

"Patti"—*See* PRE-EMPTION—RIGHT TO PRE-EMPT, 13 A. 224=11 A.W.N. 1891, 68.

"Patni talook"—*See* PATNI TENURE, 3 B. L.R.A.C. 437=12 W.R. 413.

"Payment of interest as such"—*See* LIMITATION ACT, 1908, s. 20, 3 B. 198.

Words and Phrases—*continued.*

"Pending suit"—See CIV. PRO. CODE, 1908, O. XXII, r. 10, 30 C. 609=17 C.W.N. 517.

"Period of limitation"—*See* LIMITATION ACT, 1908, ss. 6, 8, art. 120, 22 A. 33, F.B.=A.W.N. 1899, 159.

"Permanent settlement" in s. 37—*See* BEN. ACT XI OF 1859, s. 37, 10 C.W.N. 503.

"Person" in s. 539, Civ. Pro. Code, includes a minor—*See* CIV. PRO. CODE, 1908, ss. 92, 93, 6 Ind. Cas. 119.

"Person"—*See* ESTOPPEL — ESTOPPEL BY CONDUCT, 26 C. 381=3 C.W.N. 468.

"Person"—*See* LETTERS OF ADMINISTRATION, 25 C. 795=2 C.W.N. 349.

"Person"—*See* LIMITATION ACT, 1908, arts. 127, 144, 18 C. 642.

"Person"—*See* MINOR — CONTRACTS BY MINORS, 26 C. 381=3 C.W.N. 468.

"Person"—*See* STAMP ACT, 1879, ss. 58, 61, 64, 27 C. 324.

"Personal decree"—*See* DECREE—MISCELLANEOUS, 22 A. 403=A.W.N. 1900, 158.

"Personal injury not causing death to the party"—*See* PROBATE AND ADMINISTRATION ACT, 1881, s. 89, 31 C. 993=8 C.W.N. 745.

"Personally work for gain"—*See* JURISDICTION—CAUSES OF JURISDICTION, 18 B. 290.

"Personal right"—See SPECIFIC RELIEF ACT, 1877, s. 45, 3 Bom. L.R. 653.

"Person entitled to make an application"—*See* LIMITATION ACT, 1908, ss. 6, 8, 25 M. 431, F.B.=12 M.L.J. 166.

"Person interested"—*See* ACT I OF 1894, s. 3 (*b*), 184 P.L.R. 1901.

"Person interested" in s. 18 (1) of the Land Acquisition Act—*See* ACT I OF 1894, s. 18, 10 C.W.N. 195.

"Person interested"—*See* ACT I OF 1894, s. 23, 28 C. 152=5 C.W.N. 349.

"Person interested"—*See* CIV. PRO. CODE, 1908, O. XXI, r. 72, sch. III r. 2, A.W.N. 1887, 214.

"Physical comfort"—*See* EASEMENTS ACT, 1882, 7 Bom. L.R. 825=30 B. 319.

"Physical possession"—*See* U.P. ACT XVIII OF 1876, ss. 9, 10, 11, 13, 2 O.C. 9.

"Physical possession"—*See* LIMITATION ACT, 1908, art. 10, 9 A. 234=A.W.N. 1887, 24, 24 A. 17=5 C.W.N. 888=28 I. A. 248,-A.W.N. 1888, 227.

"Physical possession"—*See* LIMITATION ACT, 1908, arts. 10 and 120, 20 A. 315, F.B.=A.W.N. 1898, 61, 7 O.C. 18.

"Physical possession"—*See* PRE-EMPTION—GENERAL, 3 O.C. 184.

"Plaintiff"—*See* COSTS—SPECIAL CASES, 8 C. 440=10 C.L.R. 437.

"Plaintiff"—*See* LIMITATION ACT, 1908, s. 2, art. 144, 7 Bom. L.R. 135.

Words and Phrases—*continued.*

"Plaintiff"—*See* PRACTICE AND PROCEDURE, 10 Bom L.R. 327=32 B. 599.

"Possess" — *See* CIV. PRO. CODE, 1908, O. XXI, rr. 46, 58, 59, 60, 61, 27 M. 67, F.B.

"Possession"—*See* CIV. PRO. CODE, 1908, O. XXI, rr. 46, 58, 59, 60, 61, 27 M. 67, F.B.

"Possession"—*See* CIV. PRO. CODE, 1908, O. XXI, rr. 97, 99, 100, 101, 103, 3 Bom. L. R. 58=25 B. 478.

"Possession"—*See* LIMITATION ACT, 1908, s. 28, 6 C.W.N. 601.

"Possession"—*See* LIMITATION ACT, 1908, art. 10, 65 P.R. 1883.

"Power"—*See* APPELLATE COURT—POWER OF APPELLATE COURT, 1 B.L.R. A. C. 155=10 W.R. 160.

"Preliminary point"—*See* CIV. PRO. CODE, 1908, O. XLI, r. 23, 2 P.R 1908, F.B.=12 P. W.R. 1903=96 P.L.R. 1903.

"Preliminary point" — *See* CIV. PRO. CODE, 1908, O XLI, r. 23, s. 104, O. XLIII, r. 1, 141 P.L.R. 1902=99 P.R. 1902.

"Premises"—*See* BOM. ACT III OF 1876, s. 4, 4 B. 168, F.B.

"Premises"—*See* BOM. ACT III OF 1888, s. 391, 3 Bom. L.R. 436.

"Prescribed period"—*See* LIMITATION ACT, 1908, s. 20, 6 C. 815=8 C.L.R. 457, 12 C.L. R. 277.

"Present or future"—*See* REGISTRATION ACT, 1903, s. 17, 1 M. 378.

"Prevailing rate"—*See* BEN. ACT VIII OF 1885, s. 30 (*a*), 21 C. 986.

"Previous holder"—*See* BEN. ACT VIII OF 1869, s. 66, 31 C. 901, P.C.=8 C.W.N. 721 =31 I.A. 195=6 Bom L.R. 741=1 A.L.J. 420.

"Prior to realization"—*See* CIV. PRO. CODE, 1908, s. 73, 26 M. 179.

"Private alienation"—*See* ATTACHMENT—ALIENATION DURING ATTACHMENT, A.W.N. 1881, 75.

"Private alienation"—*See* CIV. PRO. CODE, 1908, s. 64, O. XXI, r. 55, 6 M.H.C. 65.

"Private rights"—*See* CIV. PRO. CODE, 1908, s. 84, 11 C. 17.

"Procedure"—*See* SPECIAL OR SECOND APPEAL—ERRORS OF LAW OR PROCEDURE, 7 A. 649, F.B.=A.W.N. 1885, 151.

"Proceedings" — *See* ACT I OF 1868, s. 6, 3 C. 662=2 C.L.R. 391, F.B., 16 C. 267, F.B., 15 C. 107, 13 C. 86.

"Proceedings" — *See* MAD. ACT VIII OF 1865, ss. 3, 80, 26 M. 589, F.B.

"Proceedings"—*See* PUN. ACT XIII OF 1900, s. 9, cl. (3), 26 P.L.R. 1902=26 P.R. 1902.

"Proceedings"—*See* U.P. ACT II OF 1901, s. 32, cl. 2, 1 A.L.J. 428.

"Proceedings"—*See* APPEAL—OBJECTIONS BY RESPONDENTS, 9 C.L.R. 281.

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"Proceedings"—*See* CIV. PRO. CODE, 1877, s. 3, 3 C. 662=2 C.L.R. 391, F.B.

"Process"—*See* ACT V OF 1888, 23 C. 702.

"Produce of land"—*See* U. P. ACT XII OF 1881, s. 56, A.W N. 1884, 135 and 152

"Profits" — *See* U.P. ACT XII OF 1881, s. 93, cl. (*h*), A.W.N. 1887, 250.

"Prohibited degrees"—*See* ACT IV OF 1869, s. 19, 12 C. 706.

"Promise" — *See* CONTRACT ACT, 1872, s. 25 (3), 23 M. 94.

"Promise"— *See* LIMITATION ACT, 1908, s. 19, 1 B. 590=P.J. 1877, 74.

"Proper Court"—*See* EXECUTION OF DECREE—MISCELLANEOUS, 20 A. 304=A.W.N. 1898, 43.

"Property"—*See* BOM. ACT I OF 1874, s. 30, 4 Bom. L.R. 856.

"Property"—*See* COURT FEES ACT, 1870, sch. I, cls. 11 and 12, 7 B.L.R. 57=15 W.R. 456.

"Property"—*See* COURT FEES ACT, 1870, sch. I, Item II, 25 M. 515.

"Property"—*See* EXECUTION OF DECREE—MISCELLANEOUS, 5 B.L.R. 155=13 W.R. 401.

"Property"— *See* INSOLVENCY — INSOLVENCY UNDER CIV. PRO. CODE, 7 A. 445=A.W.N. 1885, 108.

"Property"—*See* SPECIFIC RELIEF ACT, 1877, s. 9, 1 Bom. L.R. 167=23 B. 673.

"Property"—*See* TRANSFER OF PROPERTY ACT, 1882, s. 85, 1 O.C. 105.

"Property"—*See* TRANSFER OF PROPERTY ACT, 1882, s. 86, 20 M. 35=6 M.L.J. 235.

"Property comprised in the mortgage"—*See* TRANSFER OF PROPERTY ACT, 1882, s. 85, 3 C.L J. 205=33 C. 425.

"Property of deceased"—*See* SUCCESSION ACT, 1865, s. 179, 12 B.L.R. 423.

"Property the subject of a suit"—*See* RECEIVER, 17 C. 614.

'Proprietor,' in s. 53 of Act XI of 1859, (Bengal)—*See* BEN. ACT XI OF 1859, ss. 37, 53, 32 C. 27, P.C.=31 I.A. 176=8 C.W.N. 876=6 Bom. L.R. 754.

"Proprietor"—*See* C.P. ACT XVI OF 1889, ss. 121, 139, 11 C.P.L.R. 15.

"Proprietor"—*See* U. P. ACT XVII OF 1876, ss. 52 and 53, 3 O.C. 325.

"Proprietor"—*See* IMPARTIBLE ESTATE, 23 A. 194, P.C.=28 I.A. 1.

"Proprietor"—*See* LANDLORD AND TENANT—MISCELLANEOUS, 7 C.L.J. 460.

"Protected interest"—*See* BEN. ACT VIII OF 1885, ss. 160, cl. (*g*), 163, 167, 29 C. 813.

"Proved"—*See* EVIDENCE—MISCELLANEOUS, 1 C.W.N. 682.

"Public purpose"—*See* ACT I OF 1894, 30 C. 36=7 C.W.N. 249.

Words and Phrases—*continued.*

"Public street"—*See* BOM. ACT VI OF 1873, s. 17, 20 B. 146.

"Publishing or conducting"—*See* CIV. PRO. CODE, 1908, O. XXI. rr. 90 and 92, s. 47, 7 A. 641 = A.W.N. 1885, 190.

"Purakudi"— *See* RELIGIOUS ENDOWMENTS, 27 M. 291 = 8 C.W.N. 545 = 31 I.A. 83 = 14 M.L.J. 200, P.C.

"Purchase" — Means absolute title—*See* LIMITATION ACT, 1908, arts. 134, 148, 6 M.L.J. 260.

"Purchased"—*See* LIMITATION ACT, 1908, art. 134, 24 M. 471, F.B.

"Purchaser"—*See* BEN. ACT VIII OF 1885, ss. 165, 167, 28 C. 12 = 4 C.W.N. 735.

"Purchaser"—*See* LIMITATION ACT, 1908, art. 134, 24 M. 473, Note.

"Purchaser for valuable consideration"—*See* LIMITATION ACT, 1908, art. 134, 15 B. 583.

"Purporting to be done in official capacity" in s. 424, Civ. Pro. Code—*See* CIV. PRO. CODE, 1908, s. 80, 9 O.C. 275.

"Put in course of transmission"—Proper address of letter of acceptance, necessity of proof of, to admit secondary evidence—*See* CONTRACT ACT, 1872, s. 4, 9 A. 366 = A.W.N. 1887, 34.

"Putra poutradi" and "Putra poutradi Krame"—*See* HINDU LAW—WILL, 29 C. 699 = 6 C.W.N. 721.

"Putra Poutradi Santan" — *See* DEED—CONSTRUCTION OF DEEDS, 7 C.L.J. 291.

"Put up to sale"—*See* CIV. PRO. CODE, 1908, O XXI, rr. 71, 84, 86, 87, 2 C.W.N. 411.

"Pyathaing"—*See* GIFT. 14 Bur. L.R. 30 = 4 L.B.R. 231.

"Questions arising between the parties to the suit"—*See* ACT XXIII OF 1861, s. 11, 3 M.H.C. 263.

"Rateable payment"—*See* ACT II OF 1874, s. 35, 25 C. 54.

"Realisation"—*See* CIV. PRO. CODE, 1908, s. 73, 21 C. 809.

"Realised"—*See* CIV. PRO. CODE, 1908, s. 73, 6 B. 588, 6 Bom.L.R. 11 = 28 B. 264.

"Reasonable and probable cause"—*See* MALICIOUS PROSECUTION, 24 A. 363 = A.W.N. 1902, 92, 1 C.W.N. 537.

"Reasonable care"—*See* TRANSFER OF PROPERTY ACT, 1882, s. 41, 23 A. 443 = A.W.N. 1901, 137.

"Receipt" — *See* REGISTRATION ACT, 1908, s. 17, A.W.N. 1888, 82.

"Receipt"—*See* STAMP ACT, 1879, ss. 3, 17, 23 B. 54.

"Receive"—*See* ACT II OF 1874, s. 56, 22 C. 14.

"Re-claimed from sea," Deed of lease—*See* LEASE—GENERAL, 1 B. 513.

"Recorded co-sharer"—*See* U.P ACT XII OF 881, s. 92 (*h*), A.W.N. 1896, 87.

Words and Phrases—*continued.*

'Recover by suit'—*See* BEN. ACT VIII OF 1885, s. 16, 24 C. 201 = 1 C.W.N. 98.

"Re-erection"—*See* BOM. ACT III OF 1888, s. 337 (2), 9 Bom. L.R. 932.

"Registered occupant"—*See* BOM. ACT V OF 1879, ss. 3, 7, 22 B. 794.

"Re-hearing"—*See* ACT VI OF 1882, s. 169, 19 B. 208.

Civ. Pro. Code, s. 2.—"Rejecting the plaint." —The words rejecting the plaint in s. 2 of the Civ. Pro. Code, are not limited to the cases provided for in ss. 53, 54, of the Code. BENI RAM BHUTT v. RAM LAL DHUKIR, **13 C. 189.**

"Relates to the suit"—*See* CIV. PRO. CODE, 1908, O. XXIII, r. 3, 18 M. 410.

"Relating to"—*See* ACT XXIII OF 1871, s. 4, 7 Bom. L.R. 497 = 29 B. 480.

"Relating to execution" — *See* CIV. PRO. CODE, 1908, s. 47, 17 B. 23.

"Relative" in s. 3 of Act XXXV of 1858—*See* ACT XXXV OF 1858, ss. 3, 22, 94 P.R. 1906.

"Relative" — *See* SUCCESSION ACT, 1865, s. 105, 26 M. 532.

"Relief"—*See* RELIEF, 5 A. 345, F.B.

"Rent"—*See* BEN. ACT VI OF 1880, ss. 42, 44, 8 C.W.N. 640.

"Rent"—*See* BEN ACT VIII OF 1885, s. 53, 21 C. 383.

"Rent"—*See* BEN. ACT VIII OF 1885, ss. 53 to 68, ss. 72 to 75, 20 C. 254.

'Rent'—*See* BEN. ACT VIII OF 1885, ss. 58, 59 and 67, 11 C.W.N. 110 = 5 C L.J. 69.

"Rent" — *See* MAD. ACT VIII OF 1865, s. 11, 27 M. 417.

"Rent"—*See* U P. ACT XII OF 1881, ss. 3, 5, 8 (*c*), A.W.N. 1882, 60.

"Rent"—*See* U.P. ACT XII OF 1881, s. 189, 18 A 301 = A.W.N. 1896, 17.

"Rent"—*See* SMALL CAUSE COURT, MOFUSSIL, JURISDICTION OF—GENERAL, 158 P. R. 1884.

"Rental"—*See* U.P. ACT XVII OF 1876, ss. 181, 219, 1 O.C. 134.

"Rent payable"—*See* U.P. ACT XII OF 1881, s. 189, 14 A. 50 = A.W.N. 1891, 219.

"Rent payable by tenant"—*See* APPEAL —ACTS AND REGULATIONS, 13 A. 193 = A W. N. 1891, 83.

"Representative," in Act XIII of 1855—*See* ACT XIII OF 1855, 15 M.L.J 363 = 28 M. 479.

"Representative"—*See* CIV. PRO. CODE, 1908, ss. 2, 47, *cf.* s 145, O. XXI, r. 71, s. 104, O. XLIII, r 1, A W.N 1891, 85.

"Representative"—*See* CIV. PRO. CODE, 1908, s. 47, 12 C. 458, 24 C. 62, F.B. = 1 C.W.N. 36, 26 C. 250 = 3 C.W.N. 222, 9 C.W.N. 824 = 32 C. 1031.

"Representative"—*See* CIV. PRO. CODE, 1908, O. XXI, r. 16, s. 47, 27 C. 670.

Words and Phrases—*continued.*

"Representative" in s. 244, C.P. Code—*See* CIV. PRO. CODE, 1908, s. 47, 8 O.C. 370.

'Representative' in s 22 of the Oudh Rent ACT—*See* LANDLORD AND TENANT—COMPENSATION FOR IMPROVEMENTS, 8 O.C. 13.

"Representative of party"—*See* CIV. PRO. CODE, 1908, s. 47, 15 B. 190.

"Requires"—*See* CIV. PRO. CODE, 1908, O. XLI, r. 27, 9 Bom. L.R. 671=11 C W.N. 721=6 C.L J. 5=4 A L.J. 461=31 B. 381.

"Requisite for obtaining a copy of the judgment"—*See* LIMITATION ACT, 1908, s. 12, 27 M. 21=13 M L.J. 300.

"Reside"—*See* ACT IV OF 1869, s. 2, 1 L B. R. 222.

"Reside"—*See* CIV. PRO. CODE, 1908, O. III, r. 2, 14 M.L.J. 223.

"Reside"—*See* REGISTRATION ACT, 1908, s. 33, A.W.N. 1896, 170.

"Residence"—*See* ACT IV OF 1869, s. 2, 3 C.W.N. 250.

"Residence"—*See* CIV. PRO. CODE, 1908, O. XXV, r. 1 (1), 3 B. 227.

"Residence"—*See* HINDU LAW—WILL, 14 B.L.R, 60, P. C.=22 W.R. 377=1 I. A 387.

"Resides in India at the time of presenting the petition"—*See* ACT IV OF 1869, s. 2, 54 P. R. 1900.

"Residing"—*See* LUNATIC, 2 B.L.R.A.C. 246=11 W. R. 109.

"Re-sold"—*See* CIV. PRO. CODE, 1908, O. XXI, rr. 71, 84, 86, 87, 2 C. W. N. 411.

"Respondent"—*See* CIV. PRO. CODE, 1908, O. XXII, r. 4, 11 C. 694.

"Respondent"—*See* LIMITATION ACT, 1908, art. 171, 10 B. 663.

"Restraining from"—*See* CONTRACT ACT, 1872, ss. 23, 27, 6 Bom. L.R. 23.

"Retained"—*See* ACT II OF 1874, s. 56, 22 C. 14.

"Revenue"—*See* LANDLORD AND TENANT, —MISCELLANEOUS, 7 C.L.J. 460.

"Revenue"—ACT VII of 1868 (Bengal Code) —*See* LANDLORD AND TENANT—MISCELLANEOUS, 7 C.L.J. 460.

"Right"—*See* EVIDENCE ACT, 1872, s. 13, 10 B. 439.

"Right of occupancy"—*See* BEN. ACT XI OF 1859, s. 37, 31 C. 725=8 C.W.N. 601.

"Right, title and interest of the debtors"—*See* BEN. ACT VIII OF 1885, ss. 160, 163, cl. (*g*), 167, 29 C. 813.

Right to hold a 'hat' not immoveable property—*See* SPECIFIC RELIEF ACT, 1877, s. 9, 29 C. 614.

"Right to sue"—*See* CIV. PRO. CODE, 1908, O. XXII, r 1, 4 Bom L.R. 325=26 B. 597.

"Right to sue"—*See* LIMITATION ACT, 1908, ss. 6, 8, art. 120, 22 A. 33, F.B.=A.W.N. 1899, 159.

Words and Phrases—*continued.*

"Right to sue"—*See* PAUPER SUITS, 7 A. 661, F.B.=A W.N. 1885, 156.

"*Roads,*" *Bengal Municipal Act* (II *of* 1876), s. 32, *construction of.*—The word "roads" in s. 32 of the Bengal Municipal Act does not include the soil beneath the roads. CHAIRMAN OF THE NAIHATE MUNICIPALITY v. KISHORI LAL GOSWAMI, **13 C 171.** [*R.*, 20 C. 732, 25 M. 635, 4 C.L.J. 343=10 C.W.N. 1044=33 C. 1290.]

"Rope"—Contract to purchase—*See* CONTRACT—CONSTRUCTION OF CONTRACTS, Cor., 62.

"Ryot"—*See* BEN. ACT VIII OF 1885, s. 19, 21 C. 129.

"Said territories"—*See* LEGISLATURE, POWERS OF, 11 A. 490, F.B.=A.W.N. 1889, 194.

"Sale"—*See* MAHOMEDAN LAW—PRE-EMPTION—NATURE AND EXTENT OF RIGHT, 5 A. 65=A.W.N. 1882, 175.

"Saleable property"—*See* ATTACHMENT—SUBJECTS OF ATTACHMENT, 16 B. 522, 29 C. 470=6 C.W.N. 728, 6 C.L.R. 19.

"Same judgment-debtor"—*See* CIV. PRO. CODE, 1908, s. 73, 26 M. 179.

"Samskara"—*See* HINDU LAW—MARRIAGE, 9 Bom. L.R. 1366=32 B. 81=3 M.L.T. 44.

"Santana Sreni Krame"—Capacity if grantee to dispose of grant by will—*See* HINDU LAW —GIFT, 4 C. 23, P.C.=3 C.L.R. 339=5 I. A. 138.

"Sapinda"—*See* HINDU LAW—INHERITANCE, 6 C. 119=6 C.L.R. 500, F.B.

"Satisfaction"—*See* CIV. PRO. CODE, 1908, s. 47, 17 B. 23.

"Satisfaction"—*See* CIV. PRO. CODE, 1908, O. XXI, r. 41, 17 B. 511.

"Settlement," time of—*See* BEN. ACT XI OF 1859, s 37, 24 C. 887.

'*Shafi Khalit*'—*See* MAHOMEDAN LAW—PRE-EMPTION—NATURE AND EXTENT OF RIGHT, 6 A.L.J. 690=2 Ind. Cas. 458=31 A. 519.

"*Shall*" *in Civ. Pro. Code*, 1882, *s.* 643-B.—The word "Shall" in cl. (1) of s. 643-B. Civ. Pro. Code, 1882, has only a directory sense, and is not mandatory. MADAN GOPAL v. BHAGWAN DAS, **11 A. 304=A.W.N. 1889, 75.**

"Shall"—*See* BEN ACT III OF 1884, s. 339, 17 C. 329.

"Shall"—*See* STATUTE, CONSTRUCTION OF, 3 C. 47=4 I.A. 127, P.C.

"Shall not acquire any rights"—*See* BEN. ACT XI OF 1859, ss. 13 and 54, 22 C. 641.

"Share"—*See* PRE EMPTION—CONSTRUCTION OF WAJIB-UL-ARZ, A.W.N. 1882, 192, F.B.

"Sharik"—*See* PRE-EMPTION—CONSTRUCTION OF WAJIB-UL-ARZ, A.W.N. 1888, 182, 7 A.L.J. 415=6 Ind. Cas. 115.

Words and Phrases—*continued.*

"Sharkayan"—*See* PRE-EMPTION—RIGHT TO PRE-EMPT, 69 P.R. 1885.

"Shelved"—*See* EXECUTION OF DECREE — APPLICATION FOR EXECUTION AND POWERS OF COURT, 15 A. 84=A.W.N. 1893, 36, F.B.

"Shikmi Sharik"—*See* PARTNERSHIP—GENERAL, 75 P.R. 1908=122 P.W R. 1908.

"Shikmee Shoorkayam" — *See* PRE-EMPTION—CONSTRUCTION OF WAJIB UL-ARZ, Agra F.B. 171=Ed. 1874, 128.

"Shipment" — *See* CONTRACT — CONSTRUCTION OF CONTRACTS, 17 B. 129.

"*Show cause*"—The words "show cause" wherever they occur in the Civ. Pro. Code, have been used in their well-understood and technical sense signifying not merely to allege cause, nor even to make out that there is room for argument, but both to allege cause and prove it to the satisfaction of the Court. DANDEKAR v. DANDEKAR, **6 B. 663.**

"Show cause"—*See* BOM. ACT XVIII OF 1879, s. 44, para (2), 20 B. 208.

"Show cause"—*See* CIV. PRO. CODE. 1908, sch. II, r. 20, 8 A. 340=A.W.N. 1886, 107.

"Shurkayan-i-Shikmi." — Wajib-ul-arz — Construction — *See* PRE-EMPTION — CONSTRUCTION OF WAJIB-UL-ARZ, 5 A.L.J. 52=A.W.N. 1908, 16=30 A 77.

"Sign"—*See* SUCCESSION ACT, 1865, s. 50, 25 C. 911=2 C.W N. 642.

"Signature"—*See* LIMITATION ACT, 1908, s. 19, 18 B. 586.

"Signed"—*See* CIV. PRO. CODE, 1908, s. 2, 3 A. 575.

"Signing otherwise than as witness"—*See* STAMP ACT, 1879, ss. 58, 61, 64, 27 C. 324.

"Silks in a manufactured state and whether wrought up or not wrought up with other materials"—*See* ACT IV OF 1879, s. 11, sch. II, (1), 6 M. 420.

"Similar"—*See* BOM. ACT I OF 1874, 4 Bom. L.R. 384.

"Single bond"—*See* LIMITATION ACT, 1908, arts. 66, 80, 26 P.R. 1892.

"So far as it relates to the suit"—*See* CIV. PRO. CODE, 1908, O. XXVIII, r. 3, 5 M.L.J. 145.

"Some interest in property"—*See* CIV. PRO. CODE, 1908, O. XXI, rr. 58, 59, 62, s. 104, O. XLIII, r. 1, s. 105, 25 M. 555=11 M.L.J. 346.

"Sons"—*See* HINDU LAW—INHERITANCE, 5 M. 291.

"Special contract"—*See* U. P. ACT XXII OF 1886. 11 O.C. 75.

"Specifically"—*See* BOM. ACT XVII OF 1879, s. 22, 3 Bom. L.R. 545=26 B. 33.

"Specified"—*See* SPECIAL OR SECOND APPEAL—GROUNDS OF APPEAL, 18 C. 23, P.C.=17 I.A, 122.

Words and Phrases—*continued.*

"Specified law"—*See* CIV. PRO. CODE, 1908, ss. 100, 101, 20 C. 93, P.C.=19 I.A. 228.

"Specified Law"—*See* SPECIAL OR SECOND APPEAL—ERRORS OF LAW OR PROCEDURE, 7 A. 649, F.B.=A.W.N. 1885, 151.

"Stamped"—*See* CIV. PRO. CODE, 1908 s. 2, 3 A 575.

"Stamped"—*See* STAMP ACT, 1899, s. 17, 6 Bom. L.R 699.

"Stamp of an improper description"—*See* STAMP ACT, 1899, s. 37, sch. I, art. 1, 23 A. 213=A.W.N. 1901, 54, F.B.

"Statement"—*See* MAD. ACT VIII OF 1865, ss. 15, 18, 25 M. 503.

"Stranger"—*See* MAHOMEDAN LAW—PRE-EMPTION—NATURE AND EXTENT OF RIGHT, 5 A. 65=A.W.N. 1882, 175.

"Stranger" — *See* PRE-EMPTION — CONSTRUCTION OF WAJIB-UL-ARZ, 17 A. 454=A.W.N. 1895, 95, 7 Ind. Cas. 70, A.W.N. 1905, 45=2 A L J. 689=27 A. 457.

"Stranger"—*See* PRE-EMPTION—LOSS OF RIGHT TO PRE-EMPT BY WAIVER, ETC., 5 A. 197=A.W.N. 1882, 217.

"Street"—*See* BOM. ACT VI OF 1873, ss. 17, 33, 12 B. 490.

"Street"—*See* BOM. ACT III OF 1888, s. 3 (*w*), 8 Bom.L.R. 457=4 Cr. L J. 23 = 30 B. 558.

"Struck off the file"—*See* EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWERS OF COURT, 15 A. 84=A.W.N. 1893, 36, F.B.

'Sub-division' in s. 8 of the Oudh Laws Act—*See* U.P. ACT XVIII OF 1876, ss. 8 and 9, 9 O.C. 211.

"Subject-matter in dispute"—*See* BEN. ACT VI OF 1871, s. 20, A.W.N. 1887, 262.

"Subject-matter in dispute" — *See* MORTGAGE—REDEMPTION, 8 A. 438=A.W.N. 1886, 146.

"*Subordinate Courts.*"—"Subordinate Courts" does not include Small Cause Courts. MAKHAN LAL v. AMIR BAKHSH, **91 P. R. 1890.**

"Subordinate to that Court" — *See* CIV. PRO. CODE, 1908, s. 106, 14 C.P.L.R. 62.

"Subsisting decree"—*See* CIV. PRO. CODE, 1908, s. 65, O. XXI, r. 94, 11 C. 376.

"Substantial injury"—*See* EXECUTION OF DECREE— MISCELLANEOUS, A.W.N. 1885, 319.

"Such"—*See* EASEMENTS ACT, 1882, s. 51, cl. (*b*), 7 Bom.L.R. 352.

"Such"—*See* WILL — CONSTRUCTION, 8 Bom.L.R. 122=30 B. 493.

'Such debts and liabilities' in s. 3 of Act VI of 1876 (Bengal)—*See* BEN ACT VI OF 1876, s. 3, 4 C.L.J. 238=33 C. 1065.

"Such plaintiff" in s. 380, para. 2, Civ. Pro. Code, construction of—*See* CIV. PRO. CODE, 1908, O. XXV, r. 1, 18 M.L J. 155.

Words and Phrases—*continued.*

"Sudder Khajana"—*See* SUDDER KHAJANA, 12 W.R. 90.

"Sued forth"—*See* BOM. ACT XVIII OF 1848, s. 1, 12 B. 496.

"Sufficient cause"—*See* ABATEMENT OF APPEALS, 11 A. 408=A.W.N. 1888, 111.

"Sufficient cause"—*See* CIV. PRO. CODE, 1908, O. IX, r. 9, 2 C.W.N. 490.

"Sufficient cause"—*See* CIV. PRO. CODE, 1908, O. XLI, r. 21, 2 C.W.N. 414.

"Sufficient cause"—*See* LIMITATION ACT, 1908, ss. 4 and 5, 9 Bom. L.R. 893.

"Sufficient cause" in s. 5 of the Limitation Act—*See* LIMITATION ACT, 1908, ss. 4 and 5, 3 C.L.J. 545=10 C.W.N. 986=33 C. 1323.

"Sufficient reason"—*See* CIV. PRO. CODE, 1908, O. XLVII, r. 1, s. 114, A.W.N. 1882, 102.

"Sufficient reason"—*See* LIMITATION ACT, 1908, s. 5, 13 C. 62.

"Sufficient time"—*See* CIV. PRO. CODE, 1908, O. XXIX, rr. 2, 3, O. V, r. 6, 3 M.H.C. 167.

"*Suit.*"—The word "suit" does not include an appeal or application. BANESS v. TURTON, **23 P.R. 1883**. [*Cited*, 22 P.R. 1905=57 P.L.R. 1905.]

"*Suit*" *defined.*—The word "suit" ought to be confined to such proceedings as, under that description, are directly dealt with in the Code of Civil Procedure, or such as by the operation of the particular Act which regulates them are treated as suits. WATKINS v. FOX, **22 C. 943**.

"*Suit.*"—*Definition of "suit.*"—The word 'suit' in Act IX of 1871 does not include an application. DHONESSUR KOOER v. ROY GOODER SAHOY, **2 C. 336, F.B.**

"Suit"—*See* ACT XXIII OF 1871, s. 4, 7 Bom. L.R. 659=30 B. 101.

"Suit"—*See* ACT XXIII OF 1871, ss. 4, 11, 16 B. 731.

"Suit"—*See* BEN. ACT IX OF 1879, ss 51 to 55, 18 C. 500.

"Suit'—*See* BEN. ACT IX OF 1879, s. 55, 27 C. 242=4 C.W.N. 405.

"Suit"—*See* BEN. ACT VIII OF 1885, s. 153, 27 C. 484=4 C.W.N. 269.

"Suit"—*See* PUN. ACT XIII OF 1900, s. 9, cl. (3), 26 P.L.R. 1902=26 P.R. 1902.

"Suit"—*See* CIV. PRO. CODE, 1908, ss. 6, 38, 39, 41, O. XXI, rr. 4 and 5, 1 P.L.R. 1901 =9 P.R. 1901.

"Suit"—*See* CIV. PRO. CODE, 1908, ss. 10, 26, O. IV, r. 1, s. 47, 22 M. 256.

"Suit"—*See* CIV. PRO. CODE, 1908, s. 11, 12 C.P.L.R. 91.

"Suit"—*See* LIMITATION ACT, 1908, s. 14, 3 Agra 3, 1 A. 97.

"Suit"—*See* LIMITATIONACT, 1908, art. 84, 1 B. 253.

Words and Phrases—*continued.*

"Suit"—*See* RES JUDICATA—MATTERS IN ISSUE, 7 A. 247, F.B.=A.W.N. 1885, s. 15, 145 P.R. 1884.

"Suit"—*See* RES JUDICATA—RES JUDICATA IN EXECUTION PROCEEDINGS, 6 B. 54.

"Suit"—*See* RES JUDICATA — MISCELLANEOUS, 122 P.L.R. 1903.

"Suit"—*See* SUIT, 12 A. 392, F.B.=A.W.N. 1890, 119.

"Suit"—*See* TRANSFER OF CIVIL CASES, 1 O.C. 117.

"Suit between the same parties"—*See* CIV. PRO. CODE, 1908, s. 11, 2 C.P.L.R. 52 and 55.

"Suit for account"—*See* COURT FEES ACT, 1870, s. 11, 6 Bom. L.R. 1102.

"Suit for land"—*See* LETTERS PATENT, HIGH COURT, 1865—BOMBAY, cl. 12, 6 Bom. L.R. 958=29 B. 249.

"Suit for land or other immoveable property"—*See* LETTERS PATENT, HIGH COURT, 1865—CALCUTTA, cl. 12, 29 C. 315.

"Suit for land or other immoveable property"—*See* LETTERS PATENT, HIGH COURT, 1865—MADRAS, cl. 12, 27 M. 157.

"Suit for money"—*See* CIV. PRO. CODE, 1908, O. XXV, r. 1 (1) (3), 17 C. 610.

"Suit of the nature cognizable in Courts of Small Causes"—*See* CIV. PRO. CODE, 1908, ss. 42, 102, 25 C. 872.

"Summary decision or award"—*See* LIMITATION ACT, 1908, art. 181, 2 B L.R. A.C. 235=11 W.R. 117.

"Superintendent" "Trustee, Manager or—of a mosque"—*See* ACT XX OF 1863, ss. 14, 18, 8 C. 32=9 C.L.R. 433.

"Supersession,"—Municipality reconstituted after—Rights and liabilities of—*See* MAD. ACT IV OF 1884, ss. 3, 4, 21, 27, 261, 1 M.L.T. 333=16 M.L.J. 582=29 M. 539.

"Surety for the principal debtor"—*See* BOM. ACT XVII OF 1879, s. 72, 9 B. 320.

"Surprise"—*See* BELCHAMBERS RULES AND ORDERS, rr. 615, 617, 28 C. 272=5 C.W.N. 337.

"Suspending payment"—*See* CONTRACT ACT, 1872, s. 30, 7 Bom. L. R. 154.

"Svikara nemanam"—*See* HINDU LAW—WILL, 8 Ind. Cas. 517.

"Take such measures, etc."—*See* BOM. ACT VI OF 1873, s. 73, 14 B. 180.

"Tallow"—Contract to deliver—*See* CONTRACT — CONSTRUCTION OF CONTRACTS, Cor. 42.

"Talukdar"—*See* BOM. ACT VI OF 1888, s. 2 (*a*), 4 Bom. L. R. 550=26 B. 757.

"Talukdari estate"—*See* BOM. ACT VI OF 1888, s. 21, 4 Bom. L.R. 817.

"Talukdar's estate"—*See* BOM. ACT VI OF 1888, s. 21, 4 Bom. L R. 817.

Words and Phrases—*continued.*

"Talukdar's estate"—*See* BOM. ACT VI OF 1888, s. 31, 9 Bom. L.R. 1122, 11 Bom. L.R. 736.

"Taraf"—*See* ALLUVION—FORMATION OF CHURS OR ISLANDS, 3 C.L.J. 560, P.C.=1 M.L.T. 175.

"Taverai"—*See* MALABAR LAW—JOINT FAMILY, 6 M.H.C. 411.

"Technical words"— Special meaning in Hindu Law—Used in Will by a Hindu—Interpretation—*See* HINDU LAW—PARTITION, 4 S.L.R. 225.

"Tenant"—*See* U. P. ACT III OF 1878, s. 8, A.W.N. 1899, 187.

"Tender"—*See* TRANSFER OF PROPERTY ACT, 1882, s. 84. 6 M L.T. 262=3 Ind. Cas. 729=19 M.L.J. 648=33 M. 100.

"Tenure-holder"—*See* BEN. ACT VIII OF 1885, 27 C. 205=4 C.W.N. 76.

"Terminal charges"—*See* RAILWAY COMPANY, 15 B. 537.

"The Court"—*See* CIV. PRO. CODE, 1908, O. XXI, r. 92, ss. 68, 70 and 71, 20 A. 379=A.W.N. 1898, 81.

"The date fixed for the hearing"—*See* APPEAL—OBJECTIONS BY RESPONDENTS, 4 A. 248, F.B.

"The date of the sale"—*See* LIMITATION ACT, 1907, art. 138, 14 C. 644.

Agreement to sell "the entire stock at Shalimar Depot or 700-800, say seven to eight hundred tons of coal,"—Words of description, and not of estimation — *See* CONTRACT — BREACH OF CONTRACT, 37 C. 334=6 Ind. Cas. 924.

"The last preceding application"— *See* EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWERS OF COURT, 2 A. 275.

"The Law in force immediately before the passing of this Code"—*See* CIV. PRO. CODE, 1908, O. XXI, rr. 10, 21, s. 48, 12 C. 559.

"The legal heir"—*See* LUNATIC, 15 A. 29 =A.W.N. 1892, 225.

"The matter, to which the award relates"—*See* CIV. PRO. CODE, 1908, sch. II, r. 20, 31 C. 203.

"The purchaser shall not.....owners"—*See* BEN. ACT XI OF 1859, s. 54, 29 C. 223=6 C.W.N. 375.

"Thereupon"— *See* TRANSFER OF PROPERTY ACT, 1882, s. 89, 31 C. 863=8 C.W.N. 684.

"The Revenue officer in whose jurisdiction the person whose attendance is desired may be" —*See* REGISTRATION ACT, 1908, ss. 21, 39, 73, 4 M.H.C. 91.

'The right which the plaintiff claims to the property in dispute' in s. 283, Civ. Pro. Code—*See* CIV. PRO. CODE, 1908, O. XXI, rr. 58, 61, 63, 3 C.L.J. 381.

Words and Phrases—*continued.*

"The sub-lease shall not be valid"—*See* BEN. ACT VIII OF 1885, ss. 49, 85, 6 C.W.N. 377.

"Third person"—*See* BEN. ACT VIII OF 1885, s. 22, cl. 2, 21 C. 869.

"Third person"—*See* BEN. ACT VIII OF 1885, ss. 22 (1), 49 (*b*), 167, 31 C. 932.

"Timber"—*See* REGISTRATION ACT, 1908, s. 2, 1 Bom. L.R. 489=24 B. 31.

"Time"—*See* LIMITATION—GENERAL, 3 Agra 319.

"Tin-shed, not a permanent building"—*See* BEN. ACT XI OF 1859, s. 37, cl. 4, 30 C. 498.

"Title acquired under previous Act"—*See* LIMITATION ACT, 1908, art. 64, 3 A. 148, F.B.

"To be shipped"—*See* CONTRACT—CONSTRUCTION OF CONTRACTS, 17 B. 129.

"To show cause"—*See* CIV. PRO. CODE, 1908, O XXI, r. 2, 11 C. 166.

"To sue"—*See* CIV. PRO. CODE, 1908, O. II, r. 2, 7 Bom. L.R. 138.

"Town"—*See* PRE-EMPTION — MISCELLANEOUS, 7 O.C. 74.

"Trader"—*See* MAD. ACT IV OF 1884, ss. 53, 59, 60, 17 M. 100=3 M.L.J. 259.

"Transaction"—*See* EVIDENCE ACT, 1872, s. 13, 10 B. 439.

"*Transfer*"—*Land-holder and Tenant — Hypothecation of occupancy rights—Transfer—Act* XVIII *of* 1873 (*N.W.P. Rent*), s. 9—(*By the Full Bench, Mahmood, J., dissenting.*)—The hypothecation, by an occupancy tenant, of his right of occupancy, is not a "transfer" within the meaning of s. 9 of the N.W.P. Rent Act, 1873. GOPAL PANDEY v. PARSOTAM DAS, **5 A. 121, F.B.=A.W.N. 1882, 128.** [*Cons.*, 13 A. 28; *R.*, 5 A. 495, F.B., 7 A. 258, F.B., 7 A. 553, F.B., 7 A. 691, 7 A. 511, 10 B. 519, 8 A. 467, 10 A. 130, 14 B. 377, 10 C.P.L.R. 53, 12 C.P. L.R. 26.]

"Transfer"—*See* U. P. ACT XII OF 1881, ss. 8, proviso, 9, 7 A. 866, F.B.

"Transfer"—*See* U. P. ACT XII OF 1881, s. 9, A.W.N. 1890, 3, 5 A. 495, F.B.=A.W.N. 1883, 89.

"Transfer"—*See* CUSTOM — PUNJAB — ALIENATION, 2 P.R. 1898.

"Transfer"—*See* PRE-EMPTION — CONSTRUCTION OF WAJIB-UL ARZ, 3 A. 343=A.W.N. 1885, 46, 7 A. 478=A.W.N. 1885, 85.

"Transfer"—*See* RIGHT OF OCCUPANCY—TRANSFER OF RIGHT, A.W.N. 1889, 145.

"Transferee"—*See* CIV. PRO. CODE, 1908, O. XXI, r. 16, s. 47, 27 C. 670.

"Treaty"—*See* BOM. ACT X OF 1876, 29 B. 19.

"Treaty"—*See* ACT X OF 1876, s. 4 (*a*), (*b*), (*i*) (*j*), (*k*), 6 Bom. L.R. 648=29 B. 19.

"Tribe"—*See* PUN. ACT II OF 1905, s. 11, 112 P.R. 1908.

Words and Phrases—*continued.*

"Trustee," Manager or Superintendent of a mosque"—*See* ACT XX OF 1863, ss. 14, 18, 8 C. 32=9 C.L.R. 433.

"Trust for a specific purpose"—*See* LIMITATION ACT, 1908, s. 10, 10 Bom. L.R. 540=32 B. 394.

"Two or more distinct subjects"—*See* COURT FEES ACT, 1870, s. 17, 16 M.L.J. 462 =1 M.L.T. 426=30 M. 61, 16 A. 401=A.W. N. 1894, 124.

"Ubhayapattam mortgage"—*See* MORTGAGE—MISCELLANEOUS, 16 M.L.J. 462=1 M.L.T. 426=30 M. 61.

"Ulavadai"—*See* RIGHT OF OCCUPANCY —MISCELLANEOUS, 22 M. 264.

"Ulavadai Mirasdars"—*See* RELIGIOUS ENDOWMENT, 27 M. 291=8 C.W.N. 545=31 I.A. 83=14 M.L.J. 200, P.C.

"Under tenure"—*See* EXECUTION OF DECREE—MISCELLANEOUS, 8 C. 675=10 C.L.R. 399.

"Under the law in force"—*See* BEN. ACT XI OF 1859, s. 37, 31 C. 725=8 C.W.N. 601.

"Under-valuation"—*See* SUITS VALUATION ACT, 1887, s. 11, cl. (1), 31 C. 849=8 C.W.N. 705.

"Undivided family"—*See* ACT IV OF 1893, 7 Ind. Cas. 436=12 C.L.J. 525.

"Unfair advantage"—*See* CONTRACT ACT, 1872, s. 16, 9 Bom. L.R. 1164=32 B. 37.

"Unprovided for"—*See* HINDU LAW—INHERITANCE, 4 A. 243=A.W.N. 1882, 30.

"Unsound mind"—*See* LUNATIC, 7 B. 15.

"Usage having the force of law"—*See* SPECIAL OR SECOND APPEAL - ERRORS OF LAW OR PROCEDURE, 7 A. 649, F.B.=A.W.N. 1885, 151.

"Vagaira"—*Meaning of—Palmyrahs, etc., if include mango trees.*—A clause in a pattah runs thus:—"You have no connection whatever with the palmyrahs, dates, babul and other (*vagaira*) trees standing on the said lands." *Held*, that it may be reasonably doubted whether fruit trees like mango trees can be properly said to fall within this clause. The term "*vagaira*" should be understood to indicate other trees of the same class as those previously specified and those are not generally looked upon as fruit trees. GUTTA VENKATASUBBANNA v. GOVINDA KRISHNA VACHANDRULU VARU BAHADUR, **4 M.L.T. 438=19 M.L.J. 273=3 Ind. Cas. 610.**

"Vagaira"—*See* INJUNCTION— SPECIAL CASES, 22 M. 189.

"Valuable consideration"—*See* MAHOMEDAN LAW—INHERITANCE, 7 Bom. L.R. 477=29 B. 428.

"Valuation"—*See* BEN. ACT II OF 1888, ss. 135, 157, 26 C. 74=3 C.W.N. 78.

"Value"—*See* COURT FEES ACT, 1870, s. 7, cl. 8, 1 B. 352.

Words and Phrases—*continued.*

'Value' in s. 19 of Act XII of 1887 (Bengal, etc., Civil Courts)—*See* SUITS VALUATION ACT, 1887, ss. 8, 9, 12, 3 A.L.J. 266, F.B.=A. W.N. 1906, 99=28 A. 545, F.B.

"Value of property"—*See* REGISTRATION ACT, 1908, s. 17, 12 C.L.R. 444.

"Vatan"—*See* BOM. ACT III OF 1874, s. 4, 3 Bom. L.R. 249=25 B. 470.

'Vendor'—*See* LIMITATION ACT, 1908, art. 136, 31 C. 681, F.B.=8 C.W.N. 476.

"Vested or contingent"—*See* REGISTRATION ACT, 1908, s. 17, 1 M. 378.

'Village' in the Punjab Laws Act—*See* PRE-EMPTION—MISCELLANEOUS, 21 P.R. 1906.

"Village community"—*See* PRE-EMPTION —RIGHT TO PRE-EMPT, 30 C. 635, P.C.=30 I. A. 89=7 C.W.N. 498=66 P.R. 1903=90 P.L. R. 1903.

"Void"—*See* CIV. PRO. CODE, 1882, s. 257-A, 16 B. 618.

"Voluntarily"—*See* ST. 11 AND 12 VIC. C. 21, s. 24, 4 Bom. L.R. 647=26 B. 765.

"Want or failure of consideration"—*See* EVIDENCE—SECONDARY EVIDENCE, 8 Bom. L.R. 287.

"Waris"—*See* CUSTOMS—PUNJAB — INHERITANCE, 4 Ind. Cas. 555=66 P.W.R. 1909.

"Waste"—*See* CIV. PRO. CODE, 1908, O. XXXIX, r. 1, A.W.N. 1887, 42.

"Water course"—*See* BOM. ACT II OF 1906, s. 4, 2 Bom. L.R. 1136=25 B. 395.

"Whenever assets are realised"—*See* CIV. PRO. CODE, 1908, s. 73, 18 C. 242.

"Which may have been so erected or placed"—*See* BEN. ACT III OF 1884, s. 204, 25 C. 160=1 C.W.N. 660.

"Whose immoveable property has been sold" —*See* CIV. PRO. CODE, 1908, O. XXI, r. 89, 5 C.W.N. 63.

"Widower"—*See* ACT XXI OF 1865, s. 5, 11 B. 1.

"Window"—*See* DEED—CONSTRUCTION OF DEEDS, 2 Bom. L.R. 279.

"With material irregularity"—*See* CIV. PRO. CODE, 1908, s. 100, 8 A. 111, F.B.=A. W.N. 1886, 28.

"Without the sanction of Government"—*See* BOM. ACT III OF 1874, s. 10, 5 B. 283, F.B.

"Would have succeeded"—*See* U.P. ACT I OF 1869, 7 O.C. 248.

"Written lease"—*See* BEN ACT VIII OF 1885, ss. 49, 85, sub-s. (2), 8 C.W.N. 136.

"Wrong"—*See* JURISDICTION — CAUSES OF JURISDICTION, 2 Bom.L.R. 244=25 B. 230.

"Wrongfully sold"—*See* CIV. PRO. CODE, 1908, O. XXXIX, r. 1, 26 A. 311.

"Yak Judi"—*See* PRE-EMPTION—RIGHT TO PRE-EMPT, 69 P.R. 1885.

Words and Phrases—*concluded.*

"Year"—*See* C.P. ACT XVII OF 1889, s. 11, 8 C. P.L.R. 71.

"You shall enjoy the said lands with right of gift, sale, etc."—*See* HINDU LAW—WIDOW, 17 M.L.J. 243=2 M.L.T. 316=30 M. 356.

"Zamindari"—*See* LIMITATION ACT, 1908, art. 120, 3 O.C. 55.

Working for Gain.

(1)—*Jurisdiction of Court, defendant 'working for gain within—Meaning of.*—Unless the defendant either lived or worked for gain within the limits of a Court, that Court could not have jurisdiction. In this case the defendant admittedly lived at a place outside those limits and there was no record to the effect that he worked for gain within such limits. It was contended that the defendant did work for gain within such limits because he had contracted with Government to supply Kunker within such limits but it was held that it was quite possible that he may have contracts with Government for kunkers and yet not bring the kunkers himself within the limits in such a way as to be said to work for gain within the limits. SABA SINGH v. SUKH DAS, **15 P.R. 1875.**

Workman.

See ACT XIII OF 1859, 4 B.L.R. App. 1.

Proper methods of assessment of compensation under Land Acquisition Act—Workman employed on the land, not persons interested therein—*See* ACT X OF 1870, s. 42, 16 M. 369, P.C.=20 I.A. 80.

Claims of European assistants and Native establishment and, of insolvent firm—*See* ST. 11 AND 12 VIC. C. 21, s. 12, 6 B.L.R. App. 141.

Workman's Breach of Contract.

See ACT XIII OF 1859.

Worship.

(1)—*Places of worship—Right to erect.*—In India, the members of a sect are at liberty to erect a place of worship on their own property, although it is more or less contiguous to a place already occupied by a place of worship appertaining to another sect. The people of any sect are at liberty to erect, on their own property, places of worship, either public or private, and to perform worship, provided that in the performance of their worship, they do not cause material annoyance to their neighbours. MADARY v. GOBURDHUN HULWAI, **7 C. 694=9 C.L.R. 303.** (2 M. 143, *F.*)

(2)—*Rights of rival sects.*—Persons of all sects are at liberty to erect buildings and conduct public worship on their own land, provided they neither invade the rights of property enjoyed by others, nor cause a public nuisance. They are also entitled to conduct religious processions through public streets without interfering with the ordinary use of such streets by the public subject to any lawful directions

Worship—*continued.*

of the Magistrate. PARTHASARADI v. CHINNA KRISHNAN, **5 M. 304.** [*Appr.*, 26 M. 376, 26 M. 554, F.B.=1 Weir 279; *R.*, 12 M. 356, 19 M.L.J. 617, 9 Bom. L.R. 669, 32 M. 478.]

(3)—*Right to worship an idol, not an interest in immoveable property.*—The right of worshipping an idol is not in the nature of an "interest in immoveable property." ESHAN CHUNDER ROY v. MONMOHINI DASSI, **4 C. 683.**

(4)—*Right to worship outside temple—Usage.*—Where worship is offered at places other than the temple, it should not be inferred, without distinct evidence of circumstances necessarily leading to the conclusion, that any right exists to offer it at the particular place. The mere fact that a person has offered worship at a particular place for a number of years would not necessarily give him a right to do so. Mamool or usage should be examined to determine whether any special right of worship exists. Courts should be slow to recognise, without proper evidence, claims of right which would materially interfere with the right of the trustees to regulate the worship and ceremonial of temples in the interest of the whole community. *Held* in this case that plaintiff failed to establish that he used to offer worship in front of his house as a matter of right. ANKEPATI SUBBA REDDI v. TIPPANA NARAYANA REDDI GARI SUBBA REDDI, **10 M.L.T. 428.** (19 M. L. J. 743, 4 M. 315, 11 M.L.J. 715, *Cons.*)

(5)—*Mahomedan right of worship—Right to offer prayers—Right to recite Koran.*—Every Mahomedan worshipper has the right to offer prayers and to recite the Koran as a part of his right of worship in the mosque. There is nothing to prevent a worshipper from receiving at the mosque money offered to him there by others or to distribute sweetmeats. But no worshipper can claim to use the mosque as of right for such purposes. MUTHALA KANDI KATTURI KOYA MULLA v. ABU BAKER, **M.W.N. 1912, 1059.**

See ATTACHMENT—SUBJECTS OF ATTACHMENT, 6 B.L.R. 727=15 W.R. 339.

See DAMAGES—MISCELLANEOUS, 26 C. 356=3 C.W.N. 279.

Right of, if heritable and devisable—Alienation of right of—*See* HINDU LAW—RELIGIOUS ENDOWMENTS, 11 C.W.N. 782=34 C. 828.

Right of exclusive worship—Admitting new worshippers contrary to usage—Breach of trust—*See* HINDU TEMPLE, 12 C.W.N. 946, P.C. =4 M.L.T. 101=8 C.L.J. 230=31 M. 236=10 Bom. L.R. 781.

Right of periodic and exclusive—of an idol—Limitation—*See* LIMITATION ACT, 1908, art. 120, 4 C. 683.

Suit for palla or right to—in turn—Limitation—*See* LIMITATION ACT, 1908, art. 131, 8 C. 807=10 C.L.R. 439.

Worship—*concluded.*

Exclusive right of—Whether right of worship may be restricted to a class, when founded for a community—*See* MAHOMEDAN LAW—WAKF, 13 C.W.N. 26, P.C.=4 M.L.T. Special, p. 25=1 Ind. Cas. 314.

Worshipper.

Right of worshipper to complain of breach of trust of temple funds—*See* CIV. PRO. CODE, 1908, s. 92, 3 B. 27.

Suit jointly brought by trustee and—in temple, maintainability of, in the District Court—*See* CIV. PRO. CODE, 1908, ss. 92, 93, 23 M. 537=10 M.L J. 106.

Suit by worshipper at Hindu temple relating to trust—Hindu Law—Right to sue—*See* CIV. PRO. CODE, 1908, ss. 92, 93, O. I, r. 8, 11 A. 18=A.W.N. 1888, 276.

See MAHOMEDAN LAW—WAKF, 5 A. 497=A.W.N. 1883, 19.

Worshippers, interference with rights of, suit maintainable on—Suit for land maintainable by trustee only—*See* PARTIES TO SUIT—SUIT BY REPRESENTATIVES OF CLASS, 23 M. 100, (note).

Temple property—Alienation—Suit by—*See* RIGHT OF SUIT—ENDOWMENTS, SUITS RELATING TO, 75 P.R. 1884.

Writer.

Attestation—Writer's statement in document as written by him, whether sufficient attestation—*See* STAMP ACT, 1879, s. 3 (4), cl. (*b*), 17 A. 211, F.B., A.W.N. 1895, 61.

Writing.

Limitation Act, 1908, *s.* 19—*Signature by dictation.*—If the debtor dictates to a writer to write in the books of the creditor what would amount to an acknowledgment, it would save limitation though he did not himself write, sign, seal or mark the acknowledgment. RAM DITTA v. IBRAHIM UDDIN, **122 P R. 1889.** [*R.*, *& D.*, 132 P.R. 1907; *R.*, 16 P.R. 1891.]

Written Acknowledgment.

Written acknowledgment—Material alteration—Date altered—Oral evidence to prove the date—Limitation Act (XV *of* 1877), *s.* 19.—Where a written acknowledgment has its date unauthorizedly altered, oral evidence to prove that date is inadmissible under para. 2 of s. 19 of the Indian Limitation Act, 1877. GULAMALI v. MIYABHAI, **3 Bom.L.R. 574=26 B. 128.**

Written Statement.

See CIV. PRO. CODE. 1908, O.VIII, rr. 1, 6.

(1)—*Written statement—How construed.*—A written statement put in by a defendant is not a plea by way of confession and avoidance, and the whole statement must be taken together. PULIN BEHARI v. WATSON, **B.L.R. Sup. Vol. 904=9 W.R. 190.** [*Expl.*, 10 W.R. 189; *Appr.*, 22 W.R. 220; *R.*, 17 M. 473=4 M.L.J. 192.]

Written Statement—*continued.*

(2)—*Act* VIII *of* 1859, *ss.* 26, 29—*Plaint prolix or argumentative, to be rejected by Court or returned for amendment.*—The plaint in this case had been drawn in contravention of the directions of the Civ. Pro. Code, and was most unnecessarily prolix, argumentative and full of matter wholly irrelevant. The first paragraph of the plaint was to the following effect:—"Suit for setting aside a fraudulent and fabricated deed of sale and for causing the defendant to be tried for forgery." The whole plaint was mere argument such as could be inadmissible even in a written statement in which usually more latitude is allowed than in a plaint. The High Court held that the plaint ought to have been rejected or to have been returned that it might be amended by striking out the reference to criminal proceedings and other unnecessary matters. BISHEN SAHAYE SINGH v. BEER KISHORE SINGH, **8 W.R. 295.**

(3)—*Written statement—Irrelevant matter.*—Where matters irrelevant and improper were found in the written statement, the Court ordered it to be taken off the file with leave to file a fresh one. KASUBLAL DAY v. C. E. TRENEARNE, **3 B L.R. App. 12.**

(4)—*Civ. Pro. Code, s.* 124—*Written statement—Relevancy—Tender — Objection—Jurisdiction.*—The filing of a written statement does not necessarily make it a part of the record, but it is merely for the purpose of notice to the plaintiff of the nature of the defence. The production of the written statement at the trial is the "tendering" contemplated by the Code, and if not then objected to, the written statement becomes part of the record. A Court has power to reject a written statement which contains irrelevant matter or scandalous or improper matter. In considering the relevancy of a written statement, the question is not whether it discloses a good defence to the action, but whether the facts stated therein are such as the defendant believed to be material to his case. KESHAVJI NAIK v. NASARVANJI ARDESIRWADIA, **10 B. H.C. 425.**

(5)—*Court Fees Act* (VII *of* 1870), *s.* 19—*Act* VIII *of* 1859, *s.* 120—*Written statement—Court-fee.*—A written statement filed by a defendant in a Civil suit at the first hearing does not, under the existing law, require a Courtfee stamp. The mere words "petitions or applications" will not include written statements filed in Civil Courts. The levy of a Court-fee on written statements was in 1870, effected only by the express provisions of s. 120 of Act VIII of 1859. This provision has been repealed by the Civ. Pro. Code, Act X of 1877. *In re* CHERAG ALI v. KADIR MAHOMED, **12 C.L.R. 367.** (5 B. 400, *F.*)

(6)—*Court-fees.*—A written statement, either put in by the party at or before the first hearing or called for by the Court thereafter, is not liable to any Court-fee and may be written on plain paper. (*Vide* Act VII of 1870, s. 19 and Act X of 1877, s. 110). NAGU v. YEKNATH, **5 B. 400.** [*F.*, 12 C.L.R. 367, 2 L.B.R. 186.]

Written Statement—*continued.*

(7)—*Written statement--Set off—Plaint--Stamp duty.*—A written statement containing a claim of set-off must be regarded as a plaint in regard to such set-off, and should be stamped accordingly. CHENNAPPA v. RAGHUNATHA, **15 M. 29=1 M.L J. 598.** [*Diss.*, 2 L.B R. 186, 8 C. W.N. 174; *R.*, 5 M.L.J. 233, 22 M. 494=9 M.L. J. 37, 32 C. 654=1 C.L.J. 364, 130 P.L.R. 1908=85 P.R. 1908=80 P.W.R. 1908, 19 M. L.J. 340=32 M. 305.]

(8)—*Set off—Containing a claim of set-off.*—Where a claim of set off was asserted by the defendant in his written statement, but no issue on the point was raised ; no pronouncement on it was made by the first Court ; it was not made in appeal, the subject of cross-objections nor was it urged in argument before the appellate Court; the Court of appeal being of opinion that it formed an integral part of the suit, framed appropriate issues and sent the case back to the first Court for trial upon them, with a view to determining the validity of the defendant's claim for set off. THE AHMEDABAD A S. & CO. v. LAKSHMISANKAR, **6 Bom. L.R. 790.**

(9)—*Written statement — Not verified.* — Where a written statement has been put in without the verification of the defendant and the same is allowed to be on the record, it is the business of the Court to take notice of the allegations which it contains and frame issues accordingly. RADHA CHURN ROY v. MORAN & CO., **13 W.R. 342.**

(10)—*Provisions in Civ. Pro.Code, relating to verification of written statements, nature of—Observance might be waived by plaintiffs.*—The provision in the Code, relating to verification of written statements, being intended for the protection of the plaintiffs, their observance might be waived by the plaintiffs and if, therefore, the plaintiffs are prepared to waive all objections to the sufficiency of verification of the written statements, further evidence of the nature indicated may be dispensed with. SREENATH BANERJEE v. EAST INDIAN RAILWAY COMPANY, **22 C. 268.**

(11)—*Act X of* 1859, *s.*59—*Verification of written statements—Dismissal of appeal.*—S.59, Act X of 1859, is silent on the subject of verification of written statements. A plaintiff is required to verify his plaint and the parties are to be examined on oath, and, at the time of his examination, the defendant is permitted to file a written statement, but the law does not require it to be verified. When the first Court goes into the merits of the case irrespective of the omission to verify the written statement, it is not competent to the Judge on appeal to make such an omission a ground for throwing out the appeal. G. CLARKE v. SREENAUTH SINGH, **1 W.R. 132.**

(12)—*False verification of written statement —Civ. Pro. Code, s.* 115— *False evidence—Indian Penal Code, s.* 191.—A person filing a written statement in a suit is bound by law to state the truth, and if he makes a statement, which is false to his knowledge or belief, or which he believes not to be true, he is guilty of giving false evidence within the meaning of s. 191 of the Indian Penal Code. QUEEN-EMPRESS v. MEHRBAN SINGH, **6 A. 626=A. W.N. 1884, 52.** [*F.*, 1 Weir 174 ; *R.*, 27 P.R. 94 (Cr.).]

(13) — *Written statement — Application to verify—Notice— Practice.*—Where an application is made that a written statement be verified by a person other than the plaintiff or defendant, it is always desirable that notice be given to the other side ,although not absolutely necessary. FINLAY, CAMPBELL & CO. v. STEELE, **1 Ind. Jur. N.S. 39.**

(14)—*Written statement—Application to verify by agent—Notice.*—The Court will allow a written statement to be verified by the constituted attorney of the party without notice to the other side. OVEREND, GURNEY AND CO. v. STEELE, **1 Ind. Jur. N.S. 40.**

(15)—*Notice—A fact conveyed by a written statement operates as notice.*—Where a person is shown to have notice of a fact contained in a written statement put in in a case, he is fixed with it and it is immaterial that the written statement was thrown out. MATHERIS v. GULAB HARI, **6 Bom. L.R. 284.**

(16)—*Third party—Notice should be taken out before filing of.*—An application for a third party notice, under Rule 131 of the Bombay High Court Rules, must be made before the written statement is filed unless special leave has been obtained from the Court. NIPPON MENKWA v. GURMUKHRAI, **10 Bom. L.R. 1024.**

(17)—*Written statement—Third party filing and verifying written statement on behalf of plaintiff—Civ. Pro. Code,* 1859, *ss.* 28, 123.—The plaintiff in a suit went on a pilgrimage after he had been ordered to file a written statement, but without having filed it. Not having returned when the case was on the board, his son applied, under ss. 28 and 123 of Act VIII of 1859, for leave to verify and file a statement, alleging himself to be interested as a reversioner. The application was refused. *Held* that a third party will not be allowed to verify and file a written statement for a plaintiff who has culpably neglected to file one himself. DENOMOYE DOSSEE v. TARACHURN COONDOO CHOWDHRY, **Bourke, O.C. 153.**

(18)—*Practice—Written statement by plaintiff by way of rejoinder.*—To allow a plaintiff to file a written statement after having seen the written statement of the defendants and by way of rejoinder thereto, is in direct contravention of the Civ. Pro. Code. JADUB RAM DEB v. RAM LOCHUN MUDUCK, **5 W.R. 56.**

(19)—*Reasonable time for filing written statement.*—A defendant should be allowed a reasonable time to file his written statement. LOKHENATH THAKOOR v. SOBANATH MISSER, **5 W.R. Act X, Rul. 39.**

Written Statement—*continued.*

(20)—*Time for admission of—Civ. Pro. Code,* 1859, *ss.* 120, 122.—The admission of the written statements of the defendants on various dates, unless expressly called for by the Court, is contrary to the provisions of ss. 120 and 122, Civ. Pro Code, 1859. SYUD KHORSHED ALI v. MR. W. TAYLER, **W. R. 1864, 14.**

(21)—*Written statement—Defendant neglecting to put in statement—Adjournment of case—Costs.*—In the event of a defendant neglecting to furnish a written statement, the Court will examine him as to the grounds of his defence; and should it appear desirable that a written statement should be put in, the case will be adjourned for that purpose at the expense of the defaulting party. RAMRUTTON v. ORIENTAL INLAND STEAM NAVIGATION COMPANY, **2 Hyde, 89.**

(22)—*Act* VIII *of* 1859, *s.* 122—*Additional written statement.*—A Court is justified in calling for an additional written statement which did not add to or vary the plaintiff's claim, but simply supplied the names of two dakhili villages, which were admittedly comprised in the parent village, the subject of the suit. SHEIK JEHANGIR BAKSH v. LALA BHIKARI LAL, **6 B.L.R. 42 Note.**

(23)—*Act* VIII *of* 1859, *s.* 122—*Additional written statement—Costs.*—Additional written statement by the defendant was allowed to be put in, on condition of the whole costs of the other party being paid. S. M. DASIMANI DASI v. SRINATH GHOSE, **3 B.L.R. App. 11 (b).**

(24)—*Supplemental written statement—Civ. Pro. Code,* 1859, *s.* 122—*Admission of.*—Where a supplemental written statement has been called for under s. 122, Civ. Pro. Code, 1859, the Court may admit it if it does not add to or vary plaintiff's claim. JAHANGER BUKSH v. BHICKAREE LALL, **11 W.R. 71.**

(25)—*Statement—Written statement by plaintiff after plaint—Admission without prejudice to defendant.*—Where a written statement filed by the plaintiff was in the nature of an explanation of the plaint and the defendant had every opportunity to produce any evidence he chose in disproof of a kobala, which was set forth in the written statement, there was no objection to the admission of the written statement. LALL MAHOMED v. DHOOLEE RAM DOSS, **22 W.R. 377.**

(26)—*Written statement—Objections to written statement—Sunday—"Four clear days"—Civ. Pro. Code,* 1859, *s.* 124.—A written statement has been "four clear days" upon the file in compliance with the rule 28, although the last of such days is a Sunday. Objections to the written statement on the ground stated in s. 124 of Act VIII of 1859 cannot be taken when the suit is ripe for hearing. SMALLWOOD v. PARRY, **Cor., 39.**

(27)—*Written statement—Raising question of jurisdiction—Fresh issue—Practice.*—Where a question of jurisdiction had not been raised in

Written Statement—*continued.*

a written statement, the defence therein being limited to a statement of the merits of the case, an application to raise an issue as to jurisdiction was granted on payment of the costs of the adjournment to enable the plaintiff to meet the case set up. ROHEEMOLLA v. PALMER, **Cor., 8.**

(28)—*Amendment—Written statement — Inconsistent defences—Application for amendment, when disallowed.*—It is open to a defendant to include two inconsistent defences in the alternative in his original written statement. (4 C.L.J. 437, 34 C. 54, *R.*) An application to include in the written statement a defence inconsistent with the defence originally taken, is not bad. Whether an application to include in the written statement a defence inconsistent with the defence originally taken, is to be granted or not, depends upon whether the application is made in good faith and whether the application is made at such a stage of the case that, if the prayer be granted, the plaintiff may be injured in consequence of the defendant's raising without notice a totally different and inconsistent case which the plaintiff has not sufficient opportunity to meet. SRI RANG BEHARI LAL v. RACHHYA LAL, **15 C.L.J. 439.**

(29) — *Written statement — Admission.*—A brought a suit against B to recover ancestral jummai lands, of which he alleged that he had been dispossessed by B. B, in his written statement, stated that A's ancestor having relinquished the land, the Zemindar had leased the same to him, B, and he had been in possession ever since. He also stated how A's ancestor relinquished, and that he, B, had thereupon obtained a potta. He denied that he had dispossessed. *Held*, that B having admitted the possession of A's ancestor, it lay on B to prove his title. *Per Macpherson, J.*:—The opinion of the Full Bench in case No. 76 of 1867, 31st January 1868, was that if a party makes a qualified statement, that statement cannot be used against him apart from the qualification; not that if a man makes a series of independent unqualified statements, those statements cannot be used against him. That case goes no further than to lay down that an unfair use is not to be made of a man's written statement, by trying to convert into an admission by him that which he never intended to be an admission. BAIKANTHANATH KAMAR v. CHANDRA MOHAN CHOWDHRY, **1 B.L.R.A.C. 133=10 W.R. 189.**

(30)—*Written statement, Acknowledgment appearing in a.*—An acknowledgement contained in an application by the judgment-debtor by way of a written statement, wherein he said that he was unable to pay the amount then but would pay if time were given him, is a valid acknowledgment. A statement in the course of a written statement by the judgment-debtor that: "I have asked the plaintiff by a written notice to take away the sum from a third party with whom I have deposited that

Written Statement—*continued.*

sum." amounts to a valid acknowledgment. SHRINIWAS v. NARHAR, **10 Bom. L.R. 374 = 32 B. 296.**

(31) —*Points for adjudication—Issues.*—Not the written statements of parties, but the issues framed under the Code of Civil Procedure, are the index of what has been, and what has to be, adjudicated. J. P. WISE v. JUGGOBUNDHOO BOSE, **12 W.R. 229.**

(32)—*Written statement — Issue — Special appeal.*—If an issue is raised in a case, and the defendant agrees to be bound by the finding on that issue, he cannot, in special appeal, urge that the issue did not cover the whole of the objection raised by him in his written statement. SUTHYA NARAIN DUTT v. SHAMBHOO CHUNDER DUTT, **25 W.R. 214.**

(33)—*Written statement—Court referring to evidence not admissible.*—In this case, the lower appellate Court referred to a written statement, which is not admissible in evidence, for the purpose of remarking that the allegations contained in that written statement were fully borne out by the testimony on oath of a certain witness. *Held*, that there was no error of law. GOLUCK CHUNDER DOSS v. CHUNDER PERSHAD DOSS, **18 W.R. 145.**

Filing written statement after first hearing —Practice—*See* ACT IV OF 1869, s. 7, 4 B.L.R. O.C. 51.

See ADMISSION—ADMISSIONS IN PLEADINGS, 9 W.R. 83, 9 W.R. 130, 9 W.R. 290.

Principal officer of a corporation enabled to verify plaint, or written statement.—*See* CIV. PRO. CODE, 1908, O. VI, rr. 14, 15, O. XXIX, r. 1, 22 C. 268.

Supplemental—to be filed before hearing—Admissibility as evidence for affecting credit of witness—*See* CIV. PRO. CODE, 1908, O. VIII, r. 1, 4 B. 576.

Containing set-off—Claim for damages—Court-fee stamp on—*See* CIV. PRO. CODE, 1908, O. VIII, r. 6, 2 L.B.R. 186.

Claim for set-off in a payment of Court-fees for—*See* CIV. PRO. CODE, 1908, O. VIII, r. 6, 10 C.W.N. 199.

Filed—Counsel stating no instructions—*Ex parte* decree—*See* CIV. PRO. CODE, 1908, O. IX, rr. 7, 6, and 13, 6 B.L.R. 688.

Abuse of, not to be allowed—*See* CIV. PRO. CODE, 1908, O. X, r. 1 9 C.P.L.R. 11.

Statement in written statement not proof.—*See* CIV. PRO. CODE, 1908, O. XVI, r. 20, 9 B.L.R. 215 = 17 W.R. 550.

Defamatory matter in — Privilege. — *See* DEFAMATION, 7 Ind. Cas. 803.

Admission in a former—may be proved to have been made defrauding a third party—*See* ESTOPPEL—STATEMENTS AND PLEADINGS, 15 W.R. P. C. 14 = 13 M.I.A. 551.

Written Statement—*concluded.*

Denial of right in a.—*See* LANDLORD AND TENANT—FORFEITURE, 28 C. 223.

Denial of landlord's title before suit—Forfeiture—Denial of title in—Effect.—*See* LANDLORD AND TENANT—FORFEITURE, 28 C. 135 = 5 C.W.N. 263.

See LIMITATION ACT, 1908. s. 19, 16 P. R. 1891.

Suit for redemption—Admission of mortgage—of Collector as representing Court of Wards — Acknowledgment — Limitation Act, 1877, s. 19.—*See* MORTGAGE—REDEMPTION, A.W.N. 1888, 187.

See NEGOTIABLE INSTRUMENTS — PROMISSORY NOTES, 9 B.L.R. 441 = 18 W.R. 424.

Filed in a suit—Denial of plaint allegations —False evidence—*See* SANCTION TO PROSECUTE, 3 Ind. Cas. 723 = 6 M.L.T. 346 = 10 Cr. L.J. 364.

Containing a claim of set-off—How to be construed—Court-fee—*See* SET-OFF, 13 B. 672.

Set-off—Court-fee not paid at time of written statement—Levying of Court-fee after claim had become barred—Payment within time.—*See* SET-OFF, 5 M.L.J. 233.

See SET-OFF, 14 W.R. 473.

Wrong-doer.

Possession of wrong-doer, not to be constructively extended over lands not actually in his possession—*See* PARTITION—GENERAL, 12 C.W.N. 127 = 6 C.L.J. 735 = 35 C. 961.

Doctrine of constructive possession not applicable to—*See* POSSESSION—ADVERSE POSSESSION, 6 Ind. Cas. 359.

Law relating to presumptions — Whether enables wrong-doer to turn it to his own account —*See* POSSESSION—ADVERSE POSSESSION, 8 A.L.J. 247.

Relinquishment of possession by—Effect on rightful owner.—*See* POSSESSION—NATURE OF POSSESSION, 11 Bom. L.R. 1087 = 4 Ind. Cas. 244 = 33 B. 712.

Suit by Official Assignee on behalf of insolvent's creditors—Fraud of defendant, brother of insolvent—Limitation Act (XV of 1877), s. 19. —Civ. Pro. Code, 1882, ss. 13, 43—Person made party for purposes of inspection and discovery only, whether subject to *res judicata*—Several joint wrong-doers, judgment obtained against one, a bar to action against the others.—*See* RES JUDICATA—PARTIES, 14 B. 408.

Wrongful Confinement.

Suit against Police Officer for damages—Malicious act—Notice, if necessary.—*See* CIV. PRO. CODE, 1908, s. 80, 26 A. 220 = A.W.N. 1903, 241.

Wrongful Conversion.

"Conversion," what amounts to—Suit for recovery of damages on account of—Damages how assessed—*See* DAMAGES—MEASURE AND ASSESSMENT, A.W.N. 1885, 200.

See DAMAGES—MEASURE AND ASSESSMENT, 5 B.H.C O.C. 140.

Wrongful conversion of forest-timber—*See* DAMAGES—MEASURE AND ASSESSMENT, 4 C. 116, P.C.=5 I A. 130.

Wrongful Dismissal.

See GOVERNMENT, 7 B.L.R. 688.

Wrongful Distraint.

See DISTRAINT.

(1)—*Right of suit to set aside.*—The landlord is entitled to sue to set aside a wrongful distraint of crops on the land. HORRO NARAIN v. SHOODHA KRISHTO BURAH, **4 C. 890=4 C.L.R. 32.**

(2)—*Act* X *of* 1859, *ss.* 138, 142—*Vexatious distraint— Suit for damages.* — Where the plaintiff sues for damages done to his crop while it was under distraint at the suit of the defendant, such distraint having been previously declared by a decision of the Deputy Collector to have been illegal, damages might be awarded under s. 142 of Act X of 1859. In such a case, the Judge should not award damages for vexatious distraint, the time to award damages for such injury being under s. 138, Act X when the Deputy Collector directs the release of the distrained property. NONKOO RAM v. WOOJOGHUR ROY, **5 W.R. Act X, Rul. 68.**

(3)—*Act* X *of* 1859, *s.* 109—*Money decree for damages for illegal distraint—Execution against moveable property—Suit for declaratory decree against immoveable property, not maintainable in Civil Court.*—The special appellant who had obtained a decree for the recovery of damages on account of injury caused by the illegal sale of his property under the distraint law in the Deputy Collector's Court, sued out execution against the moveable property of his judgment-debtors and had exhausted it, the decree, however, remaining unsatisfied. He then instituted the present suit in the Civil Court to obtain a declaratory decree that the immoveable property of his judgment-debtor was liable for the satisfaction of his decree. The Judge refused to entertain the suit, and the High Court agreed with him holding that the special appellant had his remedy under s. 109 of Act X of 1859 and could apply to the Collector for execution of his decree, which was passed after Act X came into operation, against the immoveable property belonging to his judgment-debtor. There is nothing in the provisions of Act X rendering them inapplicable to suits instituted before but decided after it came into operation. JADUR PAUL POTEDAR v. RADHA LAL CHATTERJEE, **6 W.R. Act X, Rul. 67.**

(4)—*Execution by putneedars of decree for possession—Delivery of nominal possession—*

Wrongful Distraint—*continued.*

Putneedars carrying away crops of ryots—Abuse of law of distraint—Liability for damages.—Certain putneedars obtained a decree for *khas* possession and, in execution of decree, were put into nominal possession of the lands in suit. Instead of ousting the ryots in due course of law, they stood by and allowed the ryots to cultivate the lands, and then distrained the crops so cultivated and grown, and cut and carried them away. Hence this suit by the ryots for damages. *Held*, that the act of the putneedars was an abuse of the law of distraint and they were therefore liable for damages. ADOR MOHUN CHUCKERBUTTY v. THAKOOR MONEE DABEE, **10 W.R. 70.**

(5)—*Act* VIII (*B.C.*) *of* 1869—*Distraint—Suit to contest demand—Damages for informal distraint.*—If a ryot institutes a suit to contest the demand of a distrainer, the Court has no option, but must adjudicate upon the demand. If, on the other hand, the distrainer has distrained "otherwise than according to the provisions of the Rent Act," he has done so at his peril, and renders himself liable to an action for damages by the owner of the distrained property. TARINEE KANT LAHIREE CHOWDHRY v. RAJ KISHORE TONTRY, **24 W.R. 334.**

(6)— *Act* VIII (*B.C.*) *of* 1869, *s.* 101—*Wrongful distraint—Procedure.*—A Munsif before whom proceedings are taken under Act VIII (B.C.) of 1869, s. 101, is bound first to inquire whether an offence has been committed, and if he is satisfied that it has been committed, the only order he can make against the offenders (not being tenants) is that they shall pay the value of the crops distrained. PREM CHAND LAHA v. ADDOITO DOSS, **20 W. R. 445.**

(7)—*Wrongful distraint — Title to crops established by decree—Suit for value of crops.*—Where crops growing on the land belonging to the plaintiff had been wrongfully distrained by the defendant, and the plaintiff's title to such crops had been established by a decree of a competent Court, a subsequent suit for the value of crops lost to the plaintiff cannot be affected by any litigation regarding the proprietary title to the land on which the crops grew. RUSHEEK MOHUN BANERJEE v. GOPAL DOSS, **1 W.R. 89.**

(8)—*Illegal distraint—Effect on rent*—Illegal distraint of crops affects the zemindar's title to rent. RAM DYAL SINGH v. LUCHMEE NARAIN SINGH, **1 W.R. 240.**

(9)—*Wrongful distraint of crops—Suit for damages — Jurisdiction — Revenue Court.*—Hearing the plaint and reading the judgment in the case, the High Court found that the suit in question had been brought to recover damages for an illegal distraint of the crops of the plaintiff and it was of opinion that such a suit had been properly brought in the Revenue Courts. SHUMBOONATH BANERJEE v. TARINEE CHURN BOSE, **6 W.R. Act X, Rul. 33.**

Wrongful Distraint—*continued.*

(10)—*Act* X *of* 1859, *s.* 143—*Wrongful distraint of crops—Jurisdiction of Collector's Court.*—S. 143, Act X of 1859, contemplates the case, not only of a person who purposes to follow its provisions, though he has no power to distrain, but also of a person who distrains under colour of the Act, but not according to its provisions. RADHA MOHAN NASKAR v. JADU NATH DAS, **3 B L.R.A.C. 261=12 W.R. 68.**

(11)—*Jurisdiction — Wrongful distraint—Damages—Act* X *of* 1859, *s.* 143.—A suit to recover damages from certain parties who had distrained plaintiff's crops on the allegation that they were respectively *izaradar*, *dur-izaradar*, and *gomashta*, though not really clothed with those capacities, was held to come within the terms of s. 143, Act X of 1859, and to be cognizable by a Revenue Court, the Civil Court having no jurisdiction. RAM CHANDRA CHOWDHRY v. SUBAL PATRO, **3 B.L.R. App. 74=11 W.R. 539.** (9 W.R. 162, *F.*)

(12)—*Demand of distrainer, suit to contest—Onus of proof on landlord and tenant—Damages for illegal distraint, burden on tenant to prove actual loss.*—This was an action to contest the right of the defendant to distrain certain crops belonging to the plaintiff. The prayer in the suit was to obtain the release of the property distrained, and to recover damages for injuries wantonly done thereto. The landlord, it was *held* was in such a case to be required only to prove that the plaintiff was his tenant, and that he was liable to pay at the rate specified. If, after the landlord had succeeded in proving these facts, the tenant wanted to get rid of the claim by pleading payment, and the payment was denied, the tenant would have to prove his allegation. On the question of damages, the High Court observed that no enquiry had been made into the extent of the injury alleged to have been done to the crops distrained, the only ground upon which the claim for damages was based in the original plaint; nor did it appear on what date the lower Courts had calculated the amount of damages awarded by them. Being of opinion that before the tenant can obtain any decree for damages on account of the illegalities set forth by him, he must prove what loss he has actually "sustained thereby" (s. 142 of Act X of 1859), the High Court remanded the case to the lower appellate Court directing the necessary trial. OOJAN DEWAN v. PRANNATH MUNDUL, **8 W.R. 219.**

(13)—*Act* X *of* 1859, *s.* 143—*Distraint—Suit for damages—Jurisdiction.*—The provisions of s. 143 of Act X of 1859 will not apply, where the distrainer does not profess to have been empowered by the superior holder to distrain, but the acts of the distrainer, if wrongful, are the acts of a trespasser, for which he may be liable for damages in a suit in the Civil Court. If the distrainer is the agent of a person between whom and the defaulting tenant the relation of landlord and tenant does not subsist, Act X of 1859 will not apply and a suit for damages must be brought in a Civil Court. SHAIKH ROWSHUN v. BHOLANATH DOSS, **5 W.R. Act X, Rul., 67.**

Wrongful Distraint—*concluded.*

(14)—*Act* X *of* 1859, *s.* 143—*Distress—Justification—Trespasser.*—In order to maintain a suit under s. 143 of Act X of 1859, the plaintiff must prove that the defendant, in making the distress, was acting, not only without right, but without anything to justify him in supposing that he had a right to distrain. The plaintiff must establish distinctly that the defendant distrained when he was a mere trespasser, and when there was no reasonable foundation whatever for the allegation that he was entitled to the rent which he claimed in respect of the land. The mere fact that the defendant had no legal right to make the distress will not be sufficient. RAYEE KUMUL DOSSEE v. JHOROO MOLLAH, **15 W.R. 543.**

See BEN. ACT VIII OF 1869, s. 100, Marsh 470=2 Hay, 597.

Suit for specific moveable property wrongfully destrained—Limitation—*See* MAD. ACT VIII OF 1865, s. 78, 20 M. 449=7 M.L.J. 225.

See MALICIOUS PROSECUTION, 19 B. 485.

Wrongful Possession.

(1)—*Person long out of possession — Extinguishment of right — Subsequent wrongful possession.*—If a person is out of possession of lands for a period of 15 or 16 years, his title in them is extinguished, and no new right or cause of action can accrue to him by reason of his wrongful possession since that date. KRISTO GOPAL ROY v. ROODRO CHUNDER ROY, **25 W. R. 131.**

(2)—*Act* IX *of* 1871—*Wrongful possession for* 12 *years—Limitation.*—There is nothing in Act IX of 1871 which warrants the making of a decree in favour of parties on the strength of a wrongful possession for more than 12 years. NUGENDRO NATH MULLICK v. TRIPOORA CHURN BOSE, **24 W.R. 217.**

(3)—*Wrongful possession, right to recover money paid during—Limitation.*—Although a person might have supposed that he was the lawful owner of the property, yet where he was really, in the eye of the law, a trespasser and wrong-doer in holding possession of it against the true owner, whatever sums he might have paid in respect of the property while in such possession, were paid in his own wrong and he cannot recover such sums from the true owner, on the ground that they enured for the latter's benefit. The question of limitation does not arise in such a case. TILUCK CHAND v. SOUDAMINI DASI, **4 C. 566=3 C.L.R. 456.** [*F.*, 7 A. 660=5 A.W.N. 176; *Not F.*, 7 M.L.J. 211; *D.*, 6 C.W.N. 88; *R.*, 17 M. 251, U.B.R. (1897-1901) 533, 7 O.C. 146.]

Wrongful Seizure.

See LIMITATION ACT, 1908, arts. 29, 42, 24 A. 146=A.W.N. 1901, 211.

Wusseeyutnamah.

(1)—*Possession of* Raj *claimed by virtue of—Widow of last* Zemindar *executing — Privy Council, practice of.*—Where a party claimed possession of a *Raj* by virtue of a *Wusseeyutnamah*, or deed operating as a will, from the widow of a deceased *Zemindar*, who died without issue, leaving collateral heirs, the Judicial Committee refused to decide on the validity of the instrument devising the *Raj*, being of opinion that the *Ranee* (the widow) was incompetent by law to execute such an instrument to the prejudice of her deceased husband's heirs, and, therefore, affirmed the decree of the Court below, with costs. KEERUT SING v. KOOLAHUL SING, **5 W.R.P.C. 131=2 M. I. A. 331=1 Suther. 96=1 Sar. 196.**

See RAJ, SUCCESSION TO, 6 W.R.1,P.C.=2 M.I.A. 344.

Yadasts.

Evidence—Yadasts from Revenue officials—Admissibility—*See* EVIDENCE -- MISCELLANEOUS, 18 M. 266=4 M.L.J. 223.

Yajman.

See JURISDICTION OF CIVIL COURTS, 3 B. 9.

Yaumia.

(1)—*Allowance to mosque—Pensions Act*,1871, s. 4—*Suit against a co-trustee for declaration of co-trusteeship—Act* XX *of* 1863, *s.* 14—*Civ. Pro. Code*, s. 539.—It cannot be considered that the *Yaumia* allowance granted to a religious institution comes under Pensions Act, 1871. A suit by a trustee against a co-trustee to enforce his vested hereditary right is not governed by s. 14 of Act XX of 1863, or by s. 539 of Civ. Pro. Code. ATHAVULLA v. GOUSE, **11 M. 283.** [*Diss.*, 22 B. 496; *F.*, 31 M. 12=17 M. L.J. 549=3 M.L.T. 104.]

Decree against representatives of deceased yaumiadar—Arrears of yeomiah pension due to estate of deceased, not subject to attachment in execution of decree—*See* ATTACHMENT—SUBJECTS OF ATTACHMENT, 5 M.H.C. 371.

See ESTOPPEL—ESTOPPEL BY CONDUCT, 11 M. 12.

Zaildar.

(1)—*Selection—Votes—Mode of taking.*—In the selection of Zaildars, votes should be taken by the Deputy Commissioner or by his Assistant specially deputed for the purpose in the Zail itself. The practice of calling for alternative votes should not be resorted to. NARAIN SINGH v. HIRA SINGH, **6 P.R. 1885, Rev.**

(2)—*Appointment—Principles—Tribal representation.*—The object of appointing a Zaildar by election or selection is to secure tribal representation. It is not determined by the results of the election alone but by the combined results of the votes of the headmen of the circle, the personal fitness of the candidate

Zaildar—*continued.*

and the service rendered by him to the state. ALI MUHAMMAD v. BURA MAL, **13 P.R. 1885, Rev.**

(3) — *Succession — Selection -- Grounds — Minority.*—The office of zaildar is not hereditary and the holder of the office should be able to perform the office duties himself and not by a deputy. Thus personal fitness is one of the essentials for the appointment, and hence a minor is not eligible for the same. FATAH DARYA v. HUSAIN SHAH, **1 P.R. 1886, Rev.** [*F.*, 7 P.R. 1891, Rev.]

(4)—*Appointment - Grounds.*—A large preponderance in the number and weight of votes secured by a candidate, the greater fitness for the post and having a larger stake in the zail are all grounds for preferring a candidate for the post. SABHA CHAND v. SADHA RAM, **4 P.R. 1886, Rev.** (8 P.R. 1880, Rev., *R.*)

(5)—*Appointment — Removal — Grounds—Succession— Principles.*—A Zaildar if once appointed can only be removed for misconduct or neglect of duties. Old age or inability is no ground for removal. The rules governing the appointment of lambardars will be applied to that of zaildars also. ANOKH SINGH v. SANT SINGH, **13 P.R. 1886, Rev.**

(6) —*Appointment — Rules.*— Men who by character and influence are not fitted to discharge the duties of a zaildar and those who are believed to have acquired votes in an improper manner should be excluded from appointment. Though there is no special rule that a zaildar should reside in his own circle or own land in it, it is the intention of the Government that the zaildars should be selected from the landowners of the zail. Selection to the post of zaildar should ordinarily be made from the lambardars of the circle though under exceptional circumstances a landowner, though not a lambardar may be appointed as a zaildar. SHER SINGH v. CHANDA SINGH, **15 P.R. 1886, Rev.**

(7)—*Pleader whether qualified to be Zaildar.*—The Second Financial Commissioner held in this case that a pleader ought not to be allowed to be a zaildar as both duties cannot be satisfactorily discharged by the same person, having regard to administrative convenience. GHULAM NIAZ KHAN v. ACHAL SINGH, **3 P.R. 1887, Rev.**

(8)—*Hereditary claims—Recognition of.*—The relationship of the claimant for the office of zaildar to the former zaildar is neither a qualification nor a disqualification. If the man elected as having strongest claims on the recognised grounds is also the son of the former aildar, a Collector might fairly feel confirmed and supported in his choice. The dictum that appointments should as far as possible not be of a hereditary character disapproved. ATAR SINGH v. BAGHEL SINGH, **3 P.R. 1892, Rev.** (6 P.R. 1887 and 5 P.R. 1890, *R.*) [*F.*, 1 P.R. 1900, Rev.]

Zaildar—*concluded.*

(9)—*Zaildar —Appointment of— Hereditary claims.*—It among the claimants to the Office of a Zaildar there is a son of the deceased who has the strongest claim on the recognised grounds, he should not be disqualified on account of his relationship. RALLA RAM v. AMIR BAKSH. **1 P.L.R. 1900, Rev. = 1 P.R. 1900, Rev.** [*R.*, 59 P.R. 1902, Rev. = 71 P.L.R. 1903.]

(10)—*Zaildari cases—Appeal* —Appeals in Zaildari cases ought not to be encouraged and Deputy Commissioner's order must generally be upheld. SHANKAR v. KALU, **6 P.R. 1887, Rev.**

(11)—*Zaildari appeals.* — Zaildari appeals must not be encouraged and the Deputy Commissioner's order must if possible be upheld. SANDHI v. BUDEN CHAND, **5 P.R. 1890, Rev.** [*R.*, 3 P.R. 1892, Rev.]

Zaildari.

(1)—*Claim of a candidate of the prevailing tribe in a zail—Superior right.—Held* that a person who belongs to a prevailing tribe in a zail and is also otherwise fit to act as a zaildar should be given preference over other candidates for the post. JAFAR KHAN v. RAJA AZIMULLAH KHAN, **2 P. W. R. 1907, Rev. = 43 P L.R. 1908.**

(2)—*Zaildari—Punjab Land Revenue Act* (XVII *of* 1887), *s.* 28—*Rule* 166 *relating to zaildari—Appointment of an unqualified candidate as zaildar not allowed.—Held*, that no person is eligible for appointment as a zaildar unless he is a qualified candidate under Rule 166, before the appointment is made by the Collector. SARDAR KHAN v. BAHADUR KHAN, **3 P.W.R. 1907, Rev.**

(3)—*Zaildari- Qualifications of the candidate —To remove disqualification or to acquire qualification—Deputy Commissioner's order not to be reversed without very strong grounds.*—Appeals in Zaildari cases should not be encouraged and the orders of the Deputy Commissioner in all cases, if possible, should be upheld (6. P. R. 1887 Rev. 5 P.R. 1890 Rev. 3 P. R. 1892 Rev. *F.*). In zaildari cases, as in Lambardari cases, resort to special arrangement to remove disqualification or to acquire qualification is unobjectionable. For instance, in order to be eligible, a candidate for zaildarship may induce a lambardar to resign the lambardari in his favor. (14 P.R. 1881, Rev. 3 P. R. 1903, Rev. *R.*) The position of an Inamdar is superior to that of a mere lambardar and the Deputy Commissioner's recommendation for the candidature of the former cannot be rejected without very strong grounds. In making such an appointment, previous good public services of the candidate and the fact of his discharging the duties satisfactorily when acting as Sarbarah of the late zaildar deserve special consideration. ATAR SINGH v. GANGA SINGH, **1 P. W. R. 1913, Rev.**

Zamindar.

See HINDU LAW—IMPARTIBLE ESTATE.

See IMPARTIBLE ESTATE.

See ZAMINDARI.

(1)—*Right of zamindar to grant tenancies.*—A Zamindar can grant a tenancy to A over the head of B without interfering with the previously acquired legal rights of B. MOHUN CHUNDER DUTT v. FUKEER CHUND DEB, **6 W. R. 122.**

(2)—*Rights of zamindar and sir-holder distinguished.*—The rights of a sharer in a zamindari, *qua* zamindar, are to receive his share of the rents paid by the cultivators and of the miscellaneous profits of the estate. The rights of a *sir*-holder, *qua sir*-holder, are to be allowed to cultivate, or to cause to be cultivated by others the *sir*-land subject to the taking into account as against himself in some form or other, at the divisions among the sharers of the profits of the estate, of the rent which is, or which might be, assessed upon the holding. And, although it is true that among the miscellaneous profits of a sharer in a zamindari is included the privilege of holding *sir*-land, rent free, or at a nominal or a favourable rent, yet, when the area of the land as to which this privilege runs is, as it is in the present case, a fixed area, the right is a specific right, as to the mode of enjoyment of which, so long as his *status* of zamindar subsists, the sharer may act in the way which he thinks best conducive to his own interests. In other words, so long as his *status* of zamindar subsists, and the area of his *sir*-land is defined, a *sir*-holder has certain rights, *qua sir*-holder, which are separate and distinct from those which he has *qua* zamindar. And such rights are capable of assignment without the interests of his other co-sharers being affected by the transfer; for the sharer who assigns his rights as a *sir*-holder will, in the division of the profits of the zamindari, have set down against him in the accounts the *quota* of rent, if any, assessed upon the *sir*-land, or if no rent is assessed upon the *sir*-land the value of the rent-free tenure. HAZARI LAL v. UGRAH RAI, **A. W. N. 1884, 103.** [*R.*, 10 A. 553 = A.W.N. 1888 213.]

(3)—*Zemindar's customary right to portion of sale proceeds—Involuntary sale—Sale proceeds received by judgment-creditor—Right of zemindar to sue for his share—Act* IV *of* 1846, *s.*10—*Object of.*—Where the zemindar's customary right to one-fourth of the proceeds of sale exists in cases of involuntary sale in execution of a decree, the zemindar can assert it against the judgment-creditor who has received the whole of the proceeds of sale. His right arises upon the sale and it is a right to a portion of the sale-proceeds as a fine or fee on every change in the ownership of the property. His right attaches to the sale-proceeds and is a prior charge upon the proceeds and he may sue to recover his dues from the judgment-creditor. The object of s. 10, Act IV of 1846, was to provide that sales in execution had not the effect

Zamindar—*continued.*

of sales for arrears of revenue, but only of private sales. BYJ NATH PERSHAD v. MAHOMED FUZL HOSSEIN, **2 Agra 404.**

(4)—*Zemindars, rights of*—Huq chaharum—*Conditional sales.*—The *Huq chaharum* rights of a zemindar, namely, the right to the customary due of ¼ of the sale-proceeds, is payable not only upon ordinary sales, but also upon conditional sales, which have subsequently become by foreclosure absolute. The zemindar is entitled to recover this amount not only against the vendor, but also against the conditional purchaser, as it is incumbent on the purchaser, if he would acquit himself of all liability, to see that the zemindar is satisfied in respect of his due, and as the payment to the vendor does not discharge him. HEERA RAM v. HON'BLE SIR RAJA DEO NARAIN SINGH, **Agra F.B.R. 63=Ed. 1874, 48.**

(5)—*Act XVI of* 1842, *scope of—Lease of land for planting garden—Lessee building on leased land—Suit to eject lessee.*—The power to lease, and the restrictions imposed on it, were intended to promote and to protect the just rights and interests both of the proprietor and of the Government who received the revenue payable by him. If, on the renewal of a settlement, no cause appeared for disturbing any just arrangement already existing between the proprietor and a lessee, and both parties continued to act upon the provisions of the previously existing lease, the law did not apparently contemplate nor require that they should contract anew, as if strangers to each other. A lease granted by a Zemindar for a period exceeding the term of his own engagement with Government is voidable at his option, but is not absolutely null and void. *Semble*, that Act XVI of 1842 applied to agricultural leases, *not to bona fide* leases for other purposes. NITA RAM v. NANUCK DASS, **1 N.W.P. 103.**

(6)—*Disputes in respect of boundary—Title—Power of Zemindars to alter boundaries.*—When litigants claim as strangers, and the question resolves itself into a boundary dispute, the title of the plaintiff is not, except under very peculiar circumstances, open to attack. But, where the plaintiff sues for possession of property in the defendant's hands, not as forming part of another estate, but as having right thereto under a superior title, then the defendant has a right to call the plaintiff's title in question. Zemindars have no authority, without the sanction of Government, to alter the boundaries of their permanently settled estates, and to transfer villages from one zemindaree to another. Such an arrangement is of no binding effect, except between the parties who have made it. RAMCHUNDER BANERJEE v. MUDDUNMOHUN TEWAREE, **W. R. 1864, 355.**

(7)—*Decree for possession obtained by zemindar as such, whether could be pledged as security for zemindar's personal debt—Estate or succeeding zemindar not liable for such debt.*—Where a zemindar had, as such, obtained a decree for possession of certain land with *wassilat*, it was held that it was not competent to him to pledge such decree for a debt personal to him, and the estate could not be made liable for the debt. NIMAYE CHURN SEIN v. RAM MONEE BEEBEE, **10 W.R. 152.**

(8)—*Lakhiraj lands, rent of.*—The right of a zemindar to exact, from a tenant, payment of rent for a certain piece of land in no way depends on whether he does or does not pay revenue for that land. JOTENDRO MOHUN TAGORE v. AYMUN BEEBEE, **1 C.L.R. 366.**

(9)—*Works erected on land included in* putnee—*Compensation received by* putneedar—*Zemindar not entitled to participate.*—In this case, the land of a *putneedar* was taken from her by a Railway Company and she received, from the Company, a compensation for the loss suffered by her in consequence of works being erected by the Company on the land comprised in the *putnee.* *Held* that the zemindar who received his rents in full was not entitled to participate in the compensation received by the *putneedar.* THE MAHARAJAH OF BURDWAN v. WOOMA SOONDUREE DOSSEE, **10 W. R. 12.** [*R.*, 12 W. R. 270.]

(10)—*Liability of zemindar to preserve his irrigation tanks—His liability to damages caused by breaches in bunds of tanks*—Vis Major—*Statutory rights and duties—Negligence—Right and duty of Zemindar to maintain irrigation tanks—Ancient tanks.*—The Madras Railway Company sued the zemindar of Carvetnagaram for damages on account of injuries occasioned to their railway and works by the bursting of two tanks upon his land. The defendant contended, *inter alia*, that the injuries were the result not of any negligence of his, but of *vis major* or the act of God. He further contended that he was legally entitled and bound to store in his tank for purposes of irrigation and that he was storing water therein. The first two Courts held that the defendant was not guilty of negligence and that he was not liable for damages in the absence of negligence. Before the Privy Council, it was contended for the plaintiff that the defendant, by storing up water on his land, rendered himself liable in damages should it escape and do injury to other persons, even though he might not have been guilty of negligence. *Held* that the defendant was not liable. The rights and liabilities of the defendant with regard to the tank were analogous to those of persons or corporations on whom statutory powers have been conferred and statutory duties imposed. The duty of the defendant to maintain the tank was a duty of very much the same description as that of the Railway Company to maintain their railway. If the banks of his tank were washed away by any extraordinary flood without negligence on his part, he was no more liable for damage caused thereby than they would be for damages to a passenger on their line, or to the lands of an adjoining proprietor occasioned by the banks of the railway being washed away under similar circumstances. [*Appr.*, 3 C. 776; *R.*, 28 M. 72=15 M.L.J. 32, 6 Bom. L.R. 529=28 M.

Zamindar—*continued.*

472, 19 M.L.J. 131=5 M.L.T. 149=32 M. 141.] The principle that a man, in exercising a right which belongs to him, may be liable, without negligence, for injury done to another person, has been held inapplicable to rights conferred by statute. The public duty of maintaining existing tanks, and of constructing new ones in many places, was originally undertaken by the Government of India, and, upon the settlement of the country, has, in many instances, devolved on zemindars. The zemindars have no power to do away with these tanks, in the maintenance of which large numbers of people are interested, but are charged under Indian law, by reason of their tenure, with the duty of preserving and repairing them. MADRAS RAILWAY COMPANY v. ZEMINDAR OF CARVETNAGARAM, **14 B.L.R. 209, P.C.=22 W.R. 279=1 I.A. 364=3 Sar. 391.** [*R.*, 27 M. 435=14 M.L.J. 105, 28 M. 539=15 M.L.J. 251.]

(11)—*Zemindar and tenant—Auction sale of zemindar's right in his own puttee—Forfeiture of tenant right.*—Where all the right of a zemindar in his own *Puttee* has been sold by auction and he has now no zemindaree right therein, this circumstance would not work a forfeiture of his tenant right which he had in another *Puttee* in respect of a house. RAM BUKSH SINGH v. RAI PURDUMUN KISHORE, **2 Agra 402.**

(12)—*Act* VIII (*B.C.*) *of* 1862, *liability of putneedars to pay zemindari dak charges not affected by.*—The question in this case was, whether the zemindar was entitled to re imburse himself from the putneedar for the dak charges imposed upon him by Bengal Act VIII of 1862. It was *held* that the Act did not relieve the putneedars from liability to the usual payment of dak charges under the old laws. Act VIII of 1862 was not intended to impose a new tax, but to consolidate and regulate an old liability. Primarily the zemindars are in all cases liable to Government; but it was not designed to alter any right of the zemindar to re-imburse himself from under-holders. BISSONATH SIRCAR v. RANE SHURNO MOYEE, **4 W. R. 6.** [*R.*, 28 C. 293; *D.*, 6 W. R. 100.]

(13)—*Zemindar—Service tenure—Resumption of land.*—A zemindar is *prima facie* entitled to resume lands granted to persons on condition of their rendering services and paying a certain sum to the grantor, when those services are dispensed with. The Zemindar may also, at his pleasure, enhance the quit-rent. SANNIYASI v. SALUR ZEMINDAR, **7 M. 268.** [*R.*, 14 M. 365, 22 C. 938, 26 M. 403.]

(14)—*Act* VIII *of* 1862, *tax imposed on zemindar under—Non-liability of* putneedar.—This suit was brought by a zemindar to recover from the defendant *putneedar* the money paid by the zemindar for *dak* charges under Act VIII of 1862 (B.C.). Admitting the *putnee* lease, the defendant contended that he was not bound by the terms of his lease to pay the sum demanded by the plaintiff. *Held* that the terms of the lease in question did not make the lessee liable to the burden of paying a tax which was leviable from the zemindar under the provisions of Act VIII of 1862; and no incidence could be annexed to written contracts in matters with respect to which they are silent. RAKHAL DOSS MOOKERJEE v. RANEY SHURNO MOYEE, **6 W.R. 100.** [*F.*, 8 W.R. 45; *Diss.*, 28 C. 293.]

(15)—*Excess payment by Zemindar above sudder jumma—Provision in patta for putneedars' liability—Zemindaree dak charges not included.*—In this case it was held that, although the pottah contained a provision that "if any item is laid upon" the Zemindar "over and above the sudder jumma," the putneedar shall bear a rateable portions of it, such provision did not include the charges connected with the Zemindaree dak, such charges being a matter unconnected with the sudder jumma which a Zemindar has to pay. ROHINEE KANT ROY v. TRIPOORA SOONDUREE DASSIA, **8 W.R. 45.**

(16)—*Zemindars of Central Provinces, status of—British subjects with delegated judicial and Police powers not feudatory chiefs—Resumption of Police and excise functions—Abolition of private pounds—Suit by Zemindars in Civil Court, questioning legality—Executive acts—Zemindars, removal of, forfeiture of their privileges, discontinuance of* nazarana, *provisions as to, in* wajib-ul-arz, *if legal—Jurisdiction of Civil Courts.*—In 1864, when certain petty chiefs of the Central Provinces were declared to be feudatory chiefs and the rest were classed as non-feudatories and declared to be ordinary British subjects, certain judicial and administrative powers were entrusted to the latter or left in their hands as a matter of convenience or economy of administration. These Zemindars in exercising Police and Excise functions were not acting as of right but were so acting either by sufferance or by delegation. The resumption of these functions by the Government was a thing done by the Government in exercise of sovereign powers, and no action was maintainable in a Civil Court in regard to such resumption. The maintenance of private cattle-pounds is incompatible with the provisions of the Cattle Trespass Act, and the establishment and maintenance of cattle-pounds under the superintendence and control of Government officials empowered to obtain the assistance of the Police when required, may be considered essential for the maintenance of law and order and the peace and good Government of the country, and therefore an act of the Executive Government with which it is not competent for the Civil Court to interfere. Where such non-feudatory zemindars accepted a fresh assessment of the *takoli* or revenue payable by them to Government under s. 54 of the Central Provinces Land Revenue Act (XVIII of 1881) for 11 years from 1st July 1890 to 30th June 1901 or until a fresh settlement was made, and agreed to be bound by all the conditions of the *wajib-ul-arz* of their zamindari as laid down

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by Government ; and at the new settlement of May 1903, the zemindars were required to execute *wajib-ul-arzes*, which, amongst other things, provided for the resumption of the Police and Excise administration and cattle-pounds by Government, and also provided for the removal of zemindars and forfeiture of their privileges and the discontinuance of *nazarana* on grant or renewal of leases, and the zemindars executed the *wajib-ul-arzes* as required but under protest. *Held*, that the resumption of the Police and Excise administration and of cattle-pounds by Government could not be questioned by Civil Courts, but the District Judge's decree cancelling the clauses relating to the removal of the zemindars and the forfeiture of privileges as also concerning the discontinuance of *nazarana* on the grant or renewal of leases was proper BIR BIKRAM DEO v. THE SECRETARY OF STATE FOR INDIA IN COUNCIL, **16 C.W.N. 362, P.C.**

(17)—*Suit for account—Intervenor—Finding—Evidence in subsequent suit — Admission.*—Where, in a suit by A against an agent for an account of collections of a certain share in land, B intervenes, and the plaintiff is declared to be the Zamindar, this finding is binding against B in a subsequent suit against him by A for recovering the same share. An admission made by B in the previous suit is evidence against him in the subsequent suit. SHEO SURN SINGH v. RAM KELAWAN SINGH, **14 W.R. 165.**

(18)—*Zemindar — Under-tenant — Reception of evidence.*—The Zemindar of Jeypore sued the holder of certain taluks, forming portion of a pergunnah attached to the zemindary, for increased rent, in lieu of discontinued service of keeping up armed men ; the holder set up original possession of the whole zemindary and subsequent transfer of the same, with the exception of the disputed taluks. *Held*, confirming decisions of Courts below, that the appellant (defendant) had failed to discharge the *onus* which lay upon him, starting with the incontrovertible fact that the permanent settlement, effected with the grandfather of the respondent (plaintiff), clearly showed that the assessment was charged on the zemindary including the pergunnah of which the disputed taluks formed a part : and that, as to the reception of evidence, it would be mischievous to allow the objection against certain accounts, when such objection had not been taken in the Courts below. SRI KRISHNA DEVU MAHARAJULUNGARU v. SRI RAMACHENDRA DEVU MAHARAJULUNGARU, **5 M.L J. 389.**

(19)—*Money advanced to infant zemindar to pay arrears of Government revenue — How recoverable—Statutes, construction of.*—Money advanced to the guardian and agent of an infant zemindar to pay the arrears due to Government on account of his zemindary is recoverable in the Mofussil Courts from the zemindar, although the lenders took a bond in the English form for it from his guardian and agent in their own names, without any mention in it of the zemindar, and sued and

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obtained judgment against them personally in the Supreme Court at Calcutta upon the bond, and took one of them in execution under it. A statute restricting Courts of justice from hearing and determining suits upon certain contracts not entered into without the consent of Government, and not registered in a particular manner, does not render those contracts illegal, and therefore when that statute has been repealed, such contracts may be enforced in Courts of justice, although entered into whilst the statute was in force. GOPEE MOHUN TAKOOR v. RAJAH RADHANAT, **2 Knapp 228.**

See ACT XXIII OF 1871, ss. 8 and 11, 26 A. 617=1 A.L.J. 338.

Relation of trustee and beneficiary between Collector and zemindar—*See* ACT XXIII OF 1861, s. 11, 6 M.H.C. 293.

Apportionment of compensation-money between zemindar and putnidar—*See* ACT X OF 1870, 7 C. 585=9 C.L.R. 227.

Amount of compensation under Act X of 1870—Apportionment between— and putnidar—Principle—*See* ACT X OF 1870, 14 C. 749.

Ex-proprietary tenants mortgaging trees to Government for takavi advances—Relinquishment of their rights to zemindar—Right of Government—*See* ACT XII OF 1884, s. 5, 26 A. 540.

Suit against—for excess rents collected under zur-i-peshgi lease—*See* BEN. ACT VIII OF 1869, Marsh 655.

See BEN. ACT VI OF 1870, 4 C.W.N. 814.

See BEN. ACT VIII OF 1885, ss. 52, 90, 188, 7 C.W.N. 93.

Suit by zemindar against ryot—Improvements by zemindar—Suit to compel tenants to accept puttah at enhanced rate—Conditions essential for suit—*See* MAD. ACT VIII OF 1865, 5 M.H.C. 294.

Inamdars paying fixed rent to—Whether bound to accept patta—*See* MAD. ACT VIII OF 1865, s. 3, 21 M. 116=8 M.L.J. 43, F.B.

Suit by — to recover mesne profits from tenants of preceding Zemindar whose possession has been declared wrongful—Exchange of puttas and muchilkas, not necessary—Limitation—*See* MAD. ACT VIII OF 1865, s. 7, 4 M.H.C. 302.

Hindu Law—Authority of a—to grant lease—*See* MAD. ACT VIII OF 1865, s. 11, r. 4, 2 M. 80.

Permanent lessees of melvaram rights of—Landlords—*See* MAD. ACT VIII OF 1865, s. 12, 27 M. 465, F.B.=14 M.L.J. 81.

Landlord and tenant—Payment of water-tax by tenant—Liability of zemindar to contribute—*See* MAD. ACT VIII OF 1865, s. 69, 10 M.L J. 398.

See MAD. ACT I OF 1876, s. 7, 26 M. 389.

Zamindar—*continued.*

Usufructuary mortgage by occupancy tenant —Expiry of tenancy—Final adjudication that mortgage was binding on zamindar—Suit for redemption by—*See* U.P. ACT XII OF 1881, s. 8, A.W.N. 1887, 283.

See U.P. ACT XII OF 1881, s. 95 (*m*) and (*n*), A.W.N. 1904, 172.

Suit by lambardar against co-sharer for share of costs of litigation in connection with zemindari—Costs of suit for enhancement of rent, liability of co-sharers to lambardar for—*See* U.P. ACT XXII OF 1886, s. 108, cl. (16), 5 O.C. 298.

Allowing tenant to build on his Sir land—Building being of very small value—Estoppel in equity—*See* BUILDING, A.W.N. 1885, 100.

Sanction by—to use of waste land for religious purposes—Erection of chabutra on land —Suit for removal—*See* BUILDING, A.W.N. 1885, 325.

Suit for possession by—Title admitted—Proof—*See* BURDEN OF PROOF—POSSESSION AND PROOF OF TITLE, 11 C.L.R. 476.

Loan made to vakils of a—for purposes of the—Suit against the—*See* CAUSE OF ACTION, 5 W.R. P.C. 72.

Hindu Law—Liability of son for father's debt—Civ. Pro. Code, s. 244—Suit against son to enforce decree against father—Zemindari—*See* CIV. PRO. CODE, 1908, s. 47, 7 M. 328.

Repairs to a tank the Government was bound to do—Zemindar interested—Suit for contribution against zemindar—*See* CONTRACT ACT, 1872, s. 70, 18 M. 88=4 M.L.J. 205.

Sale of zemindari land for arrears of revenue and purchase thereof by Government—Irrigation from existing source, right to, by way of easement—Government's right to assess ryots in occupation—*See* EASEMENTS ACT, 1882, s. 13, 26 M. 51.

Suit by—to eject defendants as trespassers—Burden of proof—Right of zemindars in respect of uncultivated land—*See* EJECTMENT, SUIT FOR, A.W.N, 1904, 71.

Right of—Groves belonging to absconding tenants—Wajib-ul-arz—*Bona vacantia*, meaning of—*See* ESCHEAT, 1 O.C. 42.

Zemindar's right of escheat—*See* ESCHEAT, 2 O.C. 195.

Revenue sale—Purchase by Government—Restoration—Effect—Implied grant—Common law rights of Government—*See* GRANT—GENERAL, 14 M.L.J. 350.

See GRANTS—GRANTS FOR MAINTENANCE, 5 M.I.A. 82.

Impartible estate — Zemindar's right of alienation—*See* HINDU LAW—ALIENATION, M.H.C. 128.

Zamindar—*continued.*

A small grant to a pro-brahmin by a zemindar's widow is valid, and is not resumable by the zemindar's successor—*See* HINDU LAW—GIFT, 11 M. 288.

See HINDU LAW—IMPARTIBLE ESTATES, 24 M. 613, Note.

Of Sudra caste—Illegitimate son, right to maintenance—*See* HINDU LAW—MAINTENANCE, 5 M.H.C. 405.

Right of illegitimate son to maintenance—Sudras—Maintenance, a charge on the zemindari—*See* HINDU LAW—MAINTENANCE, 11 W. R. P.C. 6=2 B.L.R. 15, P.C.=12 M.I.A. 203.

See HINDU LAW—PARTITION, 5 C.W.N. 74=27 I.A. 151=24 M. 147, P.C.

Power of, to alienate zemindary — *See* HINDU LAW—WILL, 2 M.I.A. 54.

Suit by zemindar against tenants for arrears of rent—Intervenors pleading that they were tenants—Finding by Revenue Court against tenant—Suit in Civil Court, maintainability of —*See* JURISDICTION OF REVENUE COURTS, 1 A.L J. 703.

Right of, to site of house—Transfer of house by tenant—Customary law—*See* LANDLORD AND TENANT — TRANSFER OF TENANT'S INTEREST, 8 A.L.J. 61=9 Ind. Cas. 314.

See LANDLORD AND TENANT—MISCELLANEOUS, 31 C. 703=8 C.W.N. 320.

See LEASE—GENERAL, 2 M. 67=6 I. A. 170, P.C.

See LEASE—CONSTRUCTION OF LEASE, 4 O. C. 139.

Collection of rents by—Right to recover rents so collected — *See* LEASE — ZURIPESHGI LEASE, Marsh, 655.

Zemindari, meaning of—*See* LIMITATION ACT, 1908, art. 120, 3 O.C. 55.

Right of—to hold on his land a market in proximity to previously established market belonging to another zemindar—*See* MARKET, 5 O.C. 380.

Zemindar's right to measure lakhirajdar's lands—*See* MEASUREMENT OF LANDS, 3 B.L. R. App. 27=11 W.R. 293.

See MERGER, 3 C. L. R. 159.

See MORTGAGE—CONSTRUCTION OF MORTGAGE DEEDS, 25 M. 42.

Mortgagor of Zemindari and Sir lands—Loss by mortgagor of proprietary rights—Mortgage to be effective against ex-proprietary rights of mortgagor—*See* MORTGAGE—MISCELLANEOUS, 24 A. 538=A.W.N. 1902, 155.

Petition by raiyats to Tahsildar—*Bona fide* statements against zemindars if privileged—*See* PRIVILEGED COMMUNICATION, 12 M. 374.

See MAD. REG. XXV OF 1802, s. 3, 9 M. 307=13 I.A. 32.

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Muhbarafa—Trade-tax, Zemindar's right to collect—*See* MAD. REG. XXV OF 1802, s. 4, 9 M. 14, F.B.

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See TRANSFER OF PROPERTY ACT, 1882, ss. 2 (*d*), 111 (*d*), 117, 28 C. 744.

Rights of pasturage in zemindari waste-lands —Right of—to reclaim—*See* WASTE-LANDS, 19 A. 172=A.W.N. 1897, 35.

Zemindar and Government—Relative position of—With regard to the duty to maintain irrigation works.—*See* WATER, 7 M.L.T. 397= 6 Ind. Cas. 731=20 M.L.J. 869.

Zamindar and Inamdar.

Necessity for exchange of patta and Muchilika—Act VIII of 1865—Applicability of summary provisions—*See* MAD. ACT VIII OF 1865, 17 M.L.J. 473=30 M. 493=2 M.L.T. 469.

Zamindar and Tenant.

Undue influence—*See* CONTRACT ACT, 1872, s. 16, 5 M.L.T. 204.

Zamindari.

See HINDU LAW—IMPARTIBLE ESTATES.

See IMPARTIBLE ESTATES.

See ZAMINDAR.

(1)—Poramboke *land in a Zemindari--No presumption that it is cultivable* poramboke—Onus *on Zemindar to make out his right to cultivate it or let it out to tenants.*—There is no persumption that any *poramboke* land in a Zemindari is of such a character as could lawfully be cultivated or given out by the Zemindar for purposes of cultivation. Therefore the Zemindar must prove that it is such as he is entitled to let out on cultivation or receive kist for, if cultivated without his permission. GOPICHETTY NARAYANASAWMY NAIDU v. BONDADA CHINNA NARASIGADU, **(1912) M. W.N. 381.**

(2)—*Zemindari, how far liable for debts contracted by persons in wrongful possession.*—In a suit in which it was sought to charge a zemindari with debts contracted by persons who were at the time usurpers in wrongful possession of the zemindari, solely on the ground that the documents evidencing the loans recited that they

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were for the purpose of discharging the kists due to Government, *held*, that in the absence of any evidence on behalf of the creditor as to the circumstances in which the transactions were had with the usurping zemindars in possession, and owing to his failure in any way to connect loans made to them with the debts contracted by the former and lawful zemindars, the suit should be dismissed. CHIDAMBARA SETTI v. KATAMA NACCHIAR, **3 M.H. C. 260.** (6 M.I.A. 393, *D.*) [*R.*, 3 M. 145, 16 M. 67.]

(3)—*Purchaser of part of Zemindari at Collector's sale, right of, to kist or revenue.*—The purchaser at a Collector's sale of a part of a zemindary is not entitled to the kist or revenue of lands situate within the part he has purchased but not included in the permanent assessment of the zemindary. Land which is not included in the accounts of the Circuit Committee, upon which the permanent assessment of the Northern Circars is made, is not included in that assessment. RAJA ROW VENCATA NILADRY ROW v. VUTCHAVOY VENCATAPUTTY RAZ, **3 Knapp 23.**

Zamindari Dak, Bengal.

See BEN. ACT VIII OF 1862.

Zamindari Dues.

See U.P. ACT, XIX OF 1873, s. 66, A.W. N. 1892, 10.

Zamindari Estate.

See HINDU LAW—INHERITANCE, 6 B.L.R. 232, P.C.=15 W.R.P.C. 10=13 M.I.A. 542.

Zamindari Karnam.

Karnam in Zemindari village—Female claimant—*See* KARNAM, 10 M. 226.

See KARNAM, 11 M. 196, 15 M. 35=1 M.L.J. 746, 20 M. 145.

See MAD. REG. XXIX OF 1802, s.7, 9 M. 383.

Zamindar Salami.

Right to levy—*See* ABWABS, 13 C.L.J. 148.

See ABWABS, 7 Ind. Cas. 760.

Zamindari Tenant.

See LANDLORD AND TENANT.

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Zamindari Tenure.

(1)—*Original zemindary tenure, change of, into a bhayachara one—Re-placement under its former tenure—Application by some of the co-sharers.*—A village, which has been held in common proprietary possession by the descendants of a common ancestor since its foundation, and the original zemindary tenure of which has been changed into a bhayachara tenure, cannot afterwards, on the application of a part of the village community, be replaced under its former constitution. MAHAN RAM v. BALKRISHEN, 12 P. R. 1876.

Zamindari Village.

Shareholders — Dispute among them—Partition—Compromise, Construction of—*Hak gethansi—See* PARTITION—PRIVATE PARTITION, 20 C. 45.

Zamorin of Calicut.

Devise of arrears of political pension whether void under Hindu Law, power of, to devise separate property—*See* HINDU LAW—WILL, 21 M. 105.

Zanzibar.

See ZANZIBAR ORDER IN COUNCIL.

(1)—*Zanzibar—Law in Zanzibar territory—Ex-territorial rights of British subject—Zanzibar Order in Council*, 1884—*Treaty of* 1886—*Landholder's rights governed by local Law—Indian Land Acquisition Act*, 1894, *ss.* 6, 9, 18, 24—*Valuation of plots of land acquired for railway purposes.*—The Administration of the East Africa Protectorate, acting under the Indian Land Acquisition Act I of 1894, for the purposes of a railway at Mombasa, acquired plots of land on the island from owners to whom compensation was awarded. Possession was taken before the land had been duly acquired under the Act, and building for the railway purposes went forward without the consent of the present claimants. The provisions of the Indian Land Acquisition Act, became applicable at Mombasa on the 27th May, 1896, under power given by the Zanzibar Order in Council of 1884. The declaration of requirement of the land was made on the 2nd November following. The assessment of the value of the land acquired was made by a Court held by the Vice-Consul at Mombasa, and heard in appeal by Her Majesty's Court for Zanzibar, which increased the compensation awarded. *Held*, as to the value of the land, that the claimants were entitled, as the Act declared (ss. 23 and 24), to obtain as compensation the market value at the date of the above declaration of requirement including such advance in value as had then taken place. Any rise in value afterwards likely to accrue from the use to which the land was intended to be put was expressly excluded from consideration in determining the value by s. 24. The valuation of the Vice-Consul was more consonant to the evidence and was based on sounder principles than that of the Court for Zanzibar, which had given misleading importance to sales of small building plots close to Mombasa, and had attached importance to potential values to come; and these had been sources of error. As part of their compensation the respondents claimed the value of the buildings erected on the land before the date of the declaration, alleging that the buildings had, as soon as they were attached to the land, become the property of the then owners of the land, according to English Law. That law, however, recognizes the principle that the incidents of property in land are regulated by the law of its site. Therefore the system of law applicable on this question was the law of

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Zanzibar regulating the holding of immoveable property. That law was the Muhammadan law. It was true that art. XVI of the Treaty of 1885 conferred on British subjects the rights of ex-territoriality as regarded their persons and their property. But that was consistent with the application of the rule of the *lex loci rei sitae*. The whole question turned on the meaning of exterritoriality. It could not be maintained that, when an Englishman in foreign territory, having that right purchased land, it was thereupon attended by the same incidents that would belong to it, if it were treated as actually transferred to England. The real state of things was that the English law, for such purposes as the present, applied the local law of Zanzibar. According to this local (*i. e.* Muhammadan) Law, as proved in the Vice-Consul's Court, the owner of land, on whose property another person has built without his consent, is not entitled to the building as having become attached to the land, but is only entitled to have the building removed and the land restored to its original state. In this case that right ceased on the acquisition of the land. Whatever its value while it lasted, as a measure of compensation that value was no part of the present claim. The source of jurisdiction is the Treaty, giving authority to the Queen in foreign territory, Zanzibar The English Acts relating to foreign jurisdiction supervene, enabling Her Majesty in Council to order in what way her authority over British subjects there shall be exercised. The order in Council then is that jurisdiction shall be exercised partly in accordance with certain Anglo-Indian legislation and partly with English law. That legislation is silent on this point; and the English law, for purposes of which the present is one, incorporates the local law of Zanzibar. THE SECRETARY OF STATE FOR FOREIGN AFFAIRS v. CHARLESWORTH, PILLING & CO., AND T.D. CHARLESWORTH & CO., **26 B. 1, P.C. = 28 I.A. 121 = 18 Sar. 1.**

Court of British consul at Zanzibar—Jurisdiction to entertain suit of a civil nature—*See* CONSULAR COURT, 9 B. 58.

Jurisdiction — Revision—Appeal—Consular, Court of—High Court at Bombay—Zanzibar Order in Council, 1884, art. 21—Civ. Pro. Code, 1882, s. 622—*See* HIGH COURT, JURISDICTION OF BOMBAY, 20 B. 480, F B.

Zanzibar Court, grant of probate by—*See* PROBATE—EFFECT OF PROBATE, 8 Bom. L.R. 725.

Zanzibar Order in Council.

See ZANZIBAR.

Zanzibar orders in Council, 1897, cl. 29, Civil Courts of—Reversionary Jurisdiction of Bombay High Court over—*See* CIV. PRO. CODE, 1908, s. 115, 13 Bom. L.R. 1017.

Of 1884, art. 21—Jurisdiction—Revision—Appeal—Consular Court of Zanzibar—High Court at Bombay—Civ. Pro. Code, 1882, s. 622—*See* HIGH COURT, JURISDICTION OF—BOMBAY, 20 B. 480, F.B.

Zanzibar Order in Council—*concluded.*

Zanzibar Orders in Council, 1884 and 1897—*See* PROBATE—EFFECT OF PROBATE, 8 Bom. L.R. 725.

Zati Zarurat.

Amount paid for, when allowable —*See* CUSTOMS—PUNJAB—ALIENATION, 39 P.W. R. 1910=5 Ind. Cas. 997.

Zenana.

Pardanashin lady, arrest of — Entry into Zenana—Civ. Pro. Code, 1877, s. 336—*See* PARDANASHIN WOMAN, 7 C. 19=9 C.L.R. 25.

Zerait Land.

Evidence—Admission of tenant—*See* BEN. ACT VIII OF 1885, s. 120, 13 C.W.N. 135=9 C.L.J. 15=1 Ind. Cas. 571.

Zerait or Kamat Lands.

Landlord and tenant—Suit for ejectment—Burden of proof—Acquisition of occupancy rights—*See* BEN. ACT VIII OF 1885, ss. 116, 120, cls 2 and 178, 1 C.L.J. 456.

Zoroastrians.

Status of—*See* TRUST, 11 Bom. L.R. 85=5 M.L.T. 301=33 B. 509=2 Ind. Cas. 701.

Zoroastrian faith, tenets of the—*See* TRUST, 10 Bom. L.R. 417=33 B. 122.

Zuripeshgi Lease.

See LEASE—ZURIPESHGI-LEASE.

(1)—*Zuripeshgi lease—Tenant's possession.*—A zuripeshgi lease is not a mere contract for the cultivation of the land let, but is a real and valid security to the tenant for his money advanced. The tenant's possession under it is, in part at least, not that of cultivator only, but that of creditor, operating re-payment of the debt due by him by means of his security. BENGAL INDIGO CO. v. ROGHOBUR DAS, **24 C. 272, P.C.=23 I.A. 158=1 C.W.N. 83=7 Sar. 94.** [*D.*, 8 C.L.J. 533.]

(2)—*Zur-i-peshgee lease—Money decree.*—Where the plaintiff in his plaint did not seek to recover the money sued for from the property which was the subject of the zuripeshgee lease, but only asked for a money-decree, and there was nothing in the lease sued on which would make the property liable to be sold, the Court was wrong in passing a decree on the property. MUSSAMUT TAKIMONEE KOOER v. MOHESH SINGH, **21 W.R. 37.**

(3)—*Usufructuary mortgage or lease according to intention of parties.*—Where an instrument of zuripeshgi lease was executed for the purpose of securing the payment of money advanced it became an usufructuary mortgage, but if it was in consideration of a price paid it became a lease. MENIKCHAND v. VISHNOO GOVIND, **12 C.P.L.R. 96.** [*R.*, 13 C.P.L.R. 19, 6 N.L.R. 65.]

Zuripeshgi Lease—*concluded.*

(4)—*Unregistered lease for a term of years—Suit in ejectment by lessor before expiry of term—Right of lessee to claim compensation.*—Where, before the end of the term fixed in a zuripeshgi lease, the lessor sued in ejectment, on the ground that the lease, having been unregistered, conveyed no valid title to the lessee, the lessor could be put upon terms and decree for possession could be given conditional upon payment of compensation to the lessee. DURGAI LODHI v. AJAB SINGH, **15 C. P. L. R. 33.** (12 C. P. L. R. 154, *Comm.*; 20 W. R. 107, 17 M. 456, *R.*)

(5)—*Assertion of tenant right on expiry of lease—Burden of proof.*—Where on the expiry of a zuripeshgi-lease the lessee contended that he had tenant right the burden of proving the continuation lay on him. DHANNU v. BEOHAR DOULAT SINGH, **16 C.P.L.R. 49.**

Suit against zemindar for excess-rents collected under—*See* BEN. ACT VIII OF 1869, Marsh 655.

A raiyat taking—construed as cultivating lease—Occupancy, right of, whether can arise —*See* BEN. ACT VIII OF 1885, s. 28, 10 C.W. N. 351.

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Denial of lessee's title by sub-lessee and original lessor—Lessee, whether entitled to decree for possession in Civil Court—*See* DECREE—DECREE, FORM OF, 18 A. 440, F.B.=A.W.N. 1896, 162.

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See LIMITATION ACT, 1908, s. 18, arts. 166, 181, 3 C.W.N. 333.

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See MORTGAGE — ACCOUNTS BETWEEN MORTGAGOR AND MORTGAGEE, 3 Agra 146, 13 C. L. R. 128.

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Suit for redemption by mortgagor—Equitable set-off by zurpeshgidar—Surplus receipts, payment of mortgage-money from—*See* MORTGAGE—REDEMPTION, 2 C.L.J. 73=32 C. 576.

See MORTGAGE—REDEMPTION, 6 B.L.R. 563, Note=12 W.R. 528, Note.

Suit for arrears against occupancy-tenants—Zuripeshgidar of a portion of the holding not liable for the rent of entire holding—*See* RENT, 1 C.L.J. 136.

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* At Col. 911, Vol. iii, 27 I.A. 238 is wrongly printed as equal to.

† At Col. 728, Vol. iii, it is wrongly printed as 15 A. 69.

‡ At Col. 1274, Vol. ix, it is wrongly printed as 6 A. 26.

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* This should be 302.

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* At Col. 287, Vol. vii, it is wrongly printed as 20 A. 353.

† At Vol. 1783, Col. vii, it is wrongly printed as A.W.N. 1898, 99.

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* At Col. 1499, Vol. iv, it is wrongly printed as 12 A. 99.

† At Col. 1446, Vol. viii, it is wrongly printed as 21 A. 389.

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* At Col. 1786, Vol. ix, it is wrongly printed as 27 A. 473.

† At Col. 165, Vol. ii, it is wrongly printed as 28 A. 25.

‡ At Col. 1469, Vol. iv, it is wrongly printed as 8 A. 24.

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* At Col. 1692, Vol. i, it is wrongly printed as 30 A. 441.

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* At Cols. 593 of Vol. ii, 1131 of Vol. iv and 365 of Vol. x, it is wrongly printed as 32 A. 140.

† At Col. 1313, Vol. vi, it is wrongly printed as 31 A. 410.

‡ At Col., 1666, Vol. iv, it is wrongly printed as 31 A. 415.

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* At Col. 1533, Vol. vi, it is wrongly printed as 22 A. 566.

† At Col. 2196, Vol. iv, it is wrongly printed as 34 A. 407.

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* At Col. 158, Vol. vi, it is wrongly printed as 2 B. 338. At Col. 2248, Vol. iv, it is wrongly rinted that 7 I. A. 112 is an (=).

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* At Col. 1537, Vol. ii, it is wrongly printed as 3 B. 287.
† At Col. 1148, Vol. ix, it is wrongly printed as 9 B. 873.

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* At Col. 1288, Vol. ix, it is wrongly printed as 17 B. 1230.

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* At Col. 1354, Vol. ix, the equal to P. J. 1893, 258, is wrongly printed.

† At Col. 712, Vol. viii, it is wrongly printed as 8 B. 355 (**F.B.**).

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* At Col. 855, Vol. ix, it is wrongly printed as 9 B. 764.

† At Col. 1003, Vol. i, and Col. 1222, Vol. ix, it is wrongly printed as 19 B. 823.

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* At Col. 2119, Vol. iv, it is wrongly printed as 20 B. 72 (F.B.).

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* At Col. 225, Vol. iii, it is wrongly printed as 22 B. 599.

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* At Col. 316, Vol. x, it is wrongly printed as 23 B. 82.

† At Col. 866, Vol. iii, it is wrongly printed as 23 B. 516.

‡ At Col. 1470, Vol. vii, it is wrongly printed as 223 B. 602.

§ At Col. 1730, Vol. iii, it is wrongly printed as 25 B. 573.

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* At Col. 1210, Vol. vii, it is wrongly printed as 25 B. 600.

† At Col. 1935, Vol. ii, it is wrongly printed as 4 Bom. L.R. 26 and 14 B. 283.

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* At Cols. 569 and 179 of Vol. iii and at Col. 1203 of Vol. ix it is wrongly printed as 31 B. 33 and 30 B. 33 respectively.

† At these Columns, it is wrongly printed as 31 B. 26.

‡ At Col. 1030, Vol. ix, it is wrongly printed as 32 B. 509.

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* At Col. 1622, Vol. vii, it is wrongly printed as 32 C. 599.

† At Col. 263, Vol. viii, it is wrongly printed as 32 B. 364.

‡ At Col. 1042, Vol. ix, it is wrongly printed as 32 B. 122.

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* At Col. 1516, Vol. vii, it is wrongly printed as 4 C. 378.

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* At Col. 893, Vol. vi, it is wrongly printed as 6 C. 765.

† At Col. 948, Vol. vii, it is wrongly printed as 1 C. 245.

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* At Col. 143, Vol. x, it is wrongly printed as 9 M. 839.

† At Col. 1911, Vol. i, it should be 11 C. 150.

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* At Col. 480, Vol. iv, it is wrongly printed as 10 C. 146.

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* At Col. 1663, Vol. iii, it is wrongly printed as 17 C. 767.

† At Col. 98, Vol. ix, it is wrongly printed as 2 C. 67.

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* At Col. 993, Vol. ix, it is wrongly printed as 13 C. 42.

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† At Col. 1286, Vol. iv, it is wrongly printed as 7 C. 900, Note.

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* At. Col. 178, Vol. viii, it is wrongly printed as 15 C. 452 **(P. C.)**.

† At. Col. 987, Vol. ii, it is wrongly printed as 11 C. 485.

‡ At Col. 1604, Vol. ix, it is wrongly printed as 19 B. 623 **(F.B.)**.

§ At Col. 1534, Vol. iv, it is wrongly printed as 16 C. 634.

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* At Col. 1648, Vol. vii, it is wrongly printed as 25 C. 549.

† At Col. 1695, Vol. vii, it is wrongly printed as 2 C. 766.

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* At Col. 1372, Vol. ix, it is wrongly printed as 28 C. 68.

† At Col. 2051, Vol. iv, it is wrongly printed as 29 C. 269.

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* At Col. 256, Vol. i, it is wrongly printed as 3 O. C. 489.

† At Col. 2111, Vol. iv, it is wrongly printed as 13 C. 521.

‡ At Col. 1939, Vol. i, the reference 30 I.A 20 is wrongly printed as equal to 30 C. 679.

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* At Col. 505, Vol. ii, it is wrongly printed as 31 C. 111.

† At Col. 1634, Vol. iii, it is wrongly printed as equal to.

‡ At Col. 1000, Vol. viii, it is wrongly printed as 31 C. 377.

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* At Col. 1216, Vol. ix, it is wrongly printed as 33 C. 957.

† At Col. 1239, Vol. ii, it is wrongly printed as 30 C. 642.

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* At Col. 1673, Vol. vi, it is wrongly printed as 35 C. 320.

† At Col. 133, Vol. vii, it is wrongly printed as 33 C. 519.

‡ At Col. 992, Vol. ii, it is wrongly printed as 35 C. 101.

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* At Col. 1352, Vol. vi, it is wrongly printed as 36 C. 84.

† At Col. 858, Vol vii, it is wrongly printed as 36 C. 235.

‡ At Col. 911, Vol. ix, it is wrongly printed as 36 C. 274.

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* At Col. 1073, Vol. ix, it is wrongly printed as 8 M. 9.

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* At Col. 1848, Vol. ii, it is wrongly printed as 14 M. 469.

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* At Col. 462, Vol. viii, it is wrongly printed as 13 M. 39 (**P.C.**).

† At these Cols. it is wrongly printed as 17 M. 78.

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* At Col. 1437, Vol. iii, it is wrongly printed as 16 M. 167.

† At Col. 999, Vol. ix, it is wrongly printed as 15 M. 299 (F.B.).

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* At Col. 2104, Vol. ii, 3 M.L.J. 364 is wrongly marked as equal to.

† At Col. 2028, Vol. iii, it is wrongly printed as 17 M. 17.

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* At Col. 2142, Vol. ii, 3 M.L.J. 287 is wrongly marked as equal to.

† This should be 17 M. 298.

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* At Col. 1589, Vol. ii, it is wrongly printed as 19 M. 145.

† At Col. 1485, Vol. vi, it is wrongly printed as 19 M. 17.

‡ At Col. 2188, Vol. ii, 4 M.L.J. 263 is wrongly printed as equal to.

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* At Col. 49, Vol. vi, it is wrongly printed as 11 M. 385.

† At Col. 927, Vol. v, it is wrongly printed as 21 M. 41.

‡ 8 M.L.J. is not an equal to case to 22 M. 22.

§ At Col. 1270, Vol. ix, it is wrongly printed as 22 M. 44, Note

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* At Col. 1063, Vol. vii, it is wrongly printed as 23 M. 21.

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* At Col. 1434, Vol. vi, it is wrongly printed as 94 M. 513.

† At Cols. 1224, 1949, Vol. iv, it is wrongly printed as 25 M. 698, Note.

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* At Col. 34, Vol. v, it is wrongly printed as 27 M. 465, Note.

† This is wrongly printed as 17 M. 602.

‡ This should be 28 M. 301.

§ At Col. 660, Vol. vii, it is wrongly printed as = to 15 M.L.J. 249.

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* At Col. 1487, Vol. viii, it is wrongly printed as 28 M. 157.

† At Col. 2413, Vol. ii, it is wrongly printed as 29 M. 94.

‡ This should be 326, in Col. 1289, Vol. i.

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* At Col. 1841, Vol. ii, it is wrongly printed as Mudai Thalalvoi *v.* Kaliam Anni.

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* At Col. 1686, Vol. ix, it is wrongly printed as 31 M. 428.

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* At Col. 277, Vol. iv, it is wrongly printed as 1 C.L.J. 423.

† At Col. 1491, Vol. viii, it is wrongly printed as 1 A.C. 466.

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* At Col. 1126, Vol. v, it is wrongly printed as A.L.J. 673.

† At Col. 738, Vol. iii, it is wrongly printed as 1 A.L.J.

‡ At Col. 916, Vol. iii, it is wrongly printed as 2 A.L.J. 16.

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* At Col. 1079, Vol. vi, it is wrongly printed as 3 A.L.J. 13.

† At Col. 1026, Vol. ix, it is wrongly printed as 8 A. L. J. 242.

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* At Col. 1103, Vol. ii, it is wrongly printed as 5 A.L.J. 555.

† At Col. 2228, Vol. ii, it is wrongly printed as 5 A.L.J. 663.

‡ At Col. 287, Vol. x, it is wrongly printed as 5 A.L.J. 66.

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* At Col. 753, Vol. ii, it is wrongly printed as 7 A.L.J. 1894.

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* At Col. 700, Vol. viii, it is wrongly printed as 10 A.L.J. 614.

† At Col. 215, Vol. vii, it is wrongly printed as 9 A.L.J. 538.

‡ At Col. 1427, Vol. iv, it is wrongly printed as A.W.N. 1881, 25.

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* At Col. 976, Vol. vii, it is wrongly printed as A.W.N. 1881, 86.

† At Col. 1981, Vol. i, it is wrongly printed as A.W.N. 1881, 48.

‡ At Col. 225, Vol. ix, it is wrongly printed as A.W.N. 1881, 60.

§ At Col. 1839, Vol. vii, it is wrongly printed as A.W.N. 1881, 87.

‖ At Col. 2053, Vol. iv, it is wrongly printed as A.W.N. 1881, 11.

¶ At Col. 1610, Vol. ii, page 211 is wrongly added.

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* At Col. 733, Vol viii, it is wrongly printed as A.W.N. 1882.

† At Col. 747, Vol. v, it is wrongly printed as A.W.N. 1881, 61.

‡ At Col. 1927, Vol. i, it is wrongly printed as A.W.N 1882, 87.

§ At Col. 1390, Vol. iii, it is wrongly printed as A.W.N. 1882, 150.

‖ At Col. 615, Vol. vi, it is wrongly printed as A.W.N. 1882, 179.

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* At Col. 660, Vol. ix, it is wrongly printed as A.W.N. 1883, 14.

† At Cols. 165, Vol. i, and 1513 Vol. ix, it is wrongly printed as A.W.N. 1883, 62.

‡ At Col. 1627, Vol. vi, it is wrongly printed as A.W.N. 19.

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* At Col. 756, Vol. vii, it is wrongly printed as A.W.N. 1883, 3.

† At Col. 1868, Vol. i, it should be A.W.N. 1884, 15.

‡ At Col. 1034, Vol. iv, it is wrongly printed as A.W.N. 1884, 328.

§ At Col. 1956, Vol. vii, it is wrongly printed as A.W.N. 1884, 25.

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* At Col. 677, Vol. vi, it is wrongly printed as A.W.N. 1884, 188.
† At Col. 1241, Vol. iii, it is wrongly printed as A.W.N. 1884, 189.
‡ At Col. 1853, Vol. iv, it is wrongly printed as A.W.N. 1885, 192.
§ At Col. 1535, Vol. vi, it is wrongly printed as A.W.N. 271.
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‖ At Col. 1120, Vol. vi, it is wrongly printed as A.W.N. 1885, 27.
** At Col. 50, Vol. iv, it is wrongly printed as A.W.N. 1885, 187.
†† At Col. 582, Vol. vii, it is wrongly printed as A.W.N. 1886, 25.
‡‡ At Col. 2322, Vol. ii, it is wrongly printed as A.W.N. 1895.

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* At Col. 1662, Vol. ii, it is wrongly printed as A.W.N. 1895, 143.

† At these Cols. it is wrongly printed as A.W.N. 1885, 46.

‡ This should be 246.

§ At Col. 714, Vol. viii, it is wrongly printed as A.W.N. 1886, 93.

‖ At Col. 1438, Vol. iii, it is wrongly printed as A.W.N. 1885, 293.

¶ At Col. 1076, Vol. iv, it is wrongly printed as A.W.N. 1885, 357.

** At Col. 404, Vol. v, it is wrongly printed as A.W.N. 1885, 332.

†† At these Cols. it is wrongly printed as A.W.N. 1886.

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* At Col. 1562, Vol. ix, it is wrongly printed as A.W.N. 1886, 85.

† This should be A.W.N. 1896, 116.

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* At Col. 1555, Vol. iv, it is wrongly printed as A.W.N. 1887, 18.

† At Col. 1750, Vol. iv, it is wrongly printed as A.W.N. 1887, 321.

‡ At Col. 334, Vol. ii, it is wrongly printed as A.W.N. 1887, 28.

§ At Col. 718, Vol. ii, it is wrongly printed as A.W.N. 1888, 43.

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* At Col. 2076, Vol. iv, it is wrongly printed as A.W.N. 1887, 79.

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* At Col. 1756, Vol. ix, it is wrongly printed as A.W.N. 1887, 149.

† At Col. 1188, Vol. iv, it is wrongly printed as A.W.N. 1890, 83.

‡ At Col. 1119, Vol. vi, it is wrongly printed as A.W.N. 1890, 19.

§ At Col. 1131, Vol. ix, it is wrongly printed as A.W.N. 1810, 188, F.B.

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* At Col. 1045, Vol. vii, it is wrongly printed as A.W.N. 1891.

† At Col. 1142, Vol. ix, it is wrongly printed as A.W.N. 1892, 5.

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* At these Cols. it is wrongly printed as A.W.N. 1892, 164.

† At Col. 911, Vol. iii, 27 I.A. 238 is wrongly printed as and equal to this case.

‡ At Col. 242, Vol. ix, it is wrongly printed as A W.N. 1883, 140.

‖ At Col. 19, Vol. x, it is wrongly printed as A.W.N. 1893, 141.

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* At Col. 27, Vol. iii, it is wrongly printed as A.W.N. 1893, 181.

† At Col. 1154, Vol. ii, it is wrongly printed as A.W.N. 1894, 151 and at Col. 539, Vol. iv, as A.W.N. 1894, 28.

‡ At Col. 1612, Vol. ii, it is wrongly printed as A.W.N. 1894, 66.

‖ This should be 111.

¶ At Col. 543, Vol. v, it is wrongly printed as A.W.N. 1894, 120.

§ At Col. 1124, Vol. v, it is wrongly printed as A.W.N. 1894, 132.

$ At Col. 1272, Vol. ii, it is wrongly printed as 145.

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* At Col. 2389, Vol. ii, it is wrongly printed as A.W.N. 1895, 121.
† At Col. 1875, Vol. vii, it is wrongly printed as A.W.N. 1885, 70.
‡ At Col. 626, Vol. iii, it is wrongly printed as A.W.N. 1895, 18.
‖ At Col. 1276, Vol. ix, it is wrongly printed as A.W.N. 1865, 152.
¶ At Col 979, Vol. vii, it is wrongly printed as A.W.N. 1895, 12.
§ At Col. 18, Vol. iv, it is wrongly printed as A.W.N. 1895, 233.
$ This should be 71.

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* At Col. 403, Vol. i, it is wrongly printed as A.W.N. 1896, 29.

† At Col. 1549, Vol. vi, it is wrongly printed as A.W.N. 1896, 17.

‡ At Col. 392, Vol. iv, it is wrongly printed as A.W.N. 1896, 17.

‖ At Col. 512, Vol. ix, it is wrongly printed as A.W.N. 1898, 159.

¶ At Col. 210, Vol. i, it is wrongly printed as A.W.N. 1895, 200.

§ At Col. 1297, Vol. ii, it is wrongly printed as A.W.N. 1897, 15.

$ At Col. 323, Vol. vi, it is wrongly printed as A.W.N. 1897, 48.

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* At Col. 1681, Vol. viii, it is wrongly printed as A.W.N. 1895, 36.

† This should be A.W.N. 1899, 68.

‡ At Col. 1215, Vol. vi, it is wrongly printed as A.W.N. 1898, 713.

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* At Col. 1772, Vol. ix, it is wrongly printed as A.W N. 1898, 132.

† At Col. 630, Vol. v, it is wrongly printed as A.W.N. 1898, 133.

‡ At these Cols. it is wrongly printed as A.W.N. 1899, 7.

§ At Col. 843, Vol. iii, it is wrongly printed as A.W.N. 1898, 23.

‖ At Col. 1182, Vol. iv, it is wrongly printed as A.W.N. 1899, 79.

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* At Col. 1662, Vol. ix, it is wrongly printed as A.W.N. 1900, 178.

† At Col. 1585, Vol. i, this should be 173.

‡ At Col. 15, Vol. i, it is wrongly printed as A.W.N. 1900, 163.

§ At Col. 1718, Vol. ix, it is wrongly printed as A.W.N. 190, 122.

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* At Col. 1771, Vol. ix, it is wrongly printed as A.W.N. 1901, 13.

† This should be A.W.N. 1901, 151.

‡ At Col. 1470, Vol. v, it is wrongly printed as A.W.N. 1901, 203.

§ This should be 150 in Vol. i, Col. 1574.

‖ At Col. 1856, Vol. ix, it is wrongly printed as A.W.N. 1902, 50.

¶ At Col. 1059, Vol. i, it is wrongly printed as A.W.N. 1902, 79.

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* At Col. 247, Vol. v, it is wrongly printed as A.W.N. 193, 342.
† At Col. 1961, Vol. vii, it is wrongly printed as A.W.N. 1903, 82.
‡ At Col. 670, Vol. vii, it is wrongly printed as A.W N. 1903, 86.
§ At Col. 1290, Vol. ii, it is wrongly printed as A.W.N. 1903, 93.
¶ At Col. 442, Vol. ii, it is wrongly printed as A.W.N. 1903, 198.
‖ At Col. 837, Vol. vii, it is wrongly printed as A.W.N. 1903, 178.

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* At Col. 1301, Vol. ii, it is wrongly printed as A.W.N. 1904, 273.

† At Col. 916, Vol. iii, it is wrongly printed as A.W.N. 1905, 6.

‡ At Col. 948, Vol. iv, it is wrongly printed as A.W.N. 1865, 176.

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* At Col. 2374, Vol. ii, it is wrongly printed as A.W.N. 1905, 108.

† At Col. 1367, Vol. ii, it is wrongly printed as A.W.N. 1905, 201.

‡ This should be A.W.N. 1908, 45.

§ At Col. 427, Vol. iii, it is wrongly printed as A.W.N. 1906, 125.

¶ At Col. 2462, Vol. ii, it is wrongly printed as A.W.N. 1906, 126.

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* At Col. 1954, Vol. ii, it is wrongly printed as A.W.N. 1906, 236.

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* At Col. 1557, Vol. ii, it is wrongly printed as 1907 A.W.N. 239.

† At Col. 854, Vol. v, it is wrongly printed as A.W.N. 1908, 65.

‡ As Col. 1103, Vol. ii, it is wrongly printed as A.W.N. 1908, 93.

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* At Col. 1299, Vol. ix, it is wrongly printed as A.W.N. 1908, 296.

† At Col. 1870, Vol. viii, it is wrongly printed as 1 N.W.P. 115.

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† At Col. 369, Vol. iv, it is wrongly printed as 2 B.L.R. App. 8.

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* At these Cols. read 214 for 215.
† At Col. 1435, Vol. ix, it is wrongly printed as 3 B.L.R.A.C. 291.
‡ At Col. 128, Vol. i, read 130 for 1330 and at Col. 2118, Vol. iv, read 130 for 1030.
§ At Col. 566, Vol. iv, read 17 for 117.

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* At Col. 266, Vol. x, read 433 for 833.
† At Col. 442, Vol. iv, it is wrongly printed as 5 B.L.R. 29.
‡ Act Col. 131, Vol. x, it is wrongly printed as 5 B.L.R. App. 46.
§ At Col. 187, Vol. ix, it is wrongly printed as 3 B.L.R. App. 73, Note.

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† At Col. 1267, Vol. vi, it is wrongly printed as 2 B.L.R. 160

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* At Col. 1901, Vol. iv, it is wrongly printed as 8 B.L.R. 382.
† At Col. 1442, Vol. v, it is wrongly printed as 8 B.L.R. 412.
‡ At Col. 57, Vol. iv, it is wrongly printed as 18 B.L.R. 504 (P.C.).

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*At Col. 1657, Vol. iv, it is wrongly printed as 13 B.L.R. 336.
† At Col. 1057, Vol vi, read 292 for 392.
‡ At Col. 1205, Vol. ix, it is wrongly printed as 13 B.L.R. 292.
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* At Col. 1349, Vol. ix, it is wrongly printed as 3 B.L.R. Sup. Vol. 716 (F.B.).

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‡ At Col. 713, Vol. viii, it is wrongly printed as 3 B.H.C. A.C. 367.

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* At Col. 1138, Vol. vi, it is wrongly printed as 8 B.H.C.A.C. 9.

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* At Col. 574, Vol. vi, it is wrongly printed as 10 B.H.C. 48. † At Col. 58, Vol. ix, it is wrongly printed as 1 B.H.C. 37. ‡ At Col. 878, Vol. iv, it is wrongly printed as 12 B.H.C. 179.

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† At Col. 954, Vol. v, it is wrongly printed as 2 Bom. L. R. 28.

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* At Cols. 342, 343, Vol. i, and Col. 1132, Vol. ix, read 497 for 496.
† At Col. 1671, Vol. vii, read 753 for 733.

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* At Col. 945, Vol. vii, read 978 for 982.

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* At Col. 2201, Vol. iv, read 9 Bom. L.R. for 9 B.L.R. and in Col. 731, Vol. ix, read 382 for 383.

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* At Col. 759, Vol. viii, read 1101 for 1102.

† At Col. 19, Vol. ix, read 383 for 313.

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* At Col. 393, Vol. ii, read 13 for 18 Bom. L.R.

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* At Col. 1284, read 408 for 708. † This should be 3 C.L.J. 391. ‡ At Col. 1642, Vol. iv, read 56 for 59.

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* At Col. 1732, Vol. vii, read 40 for 6 C.L.J. 48.

† At Col. 1326, Vol. iv, read 6 C.L.J. for 5 C.L.J. 766.

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* At Col. 1524 Vol. vii; read 414 for 7 C.L.J. 114.

† At Col. 1957, Vol. ix, read 135 for 315.

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* At Col. 1566, Vol. iv, read 497 for 499.
† At Col. 42, Vol. vii, read 150 for 130.
‡ At Col. 1457, Vol. ii, read 26 for 27.

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* At Col. 904, Vol. i, read 140 for 141.
‡ At Col. 845, Vol. v, read 104 for 204.
† At Col. 1917, Vol. viii, read 74 for 75.

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*At Col. 1491, Vol. ii, read 519 for 574. † At Col. 1083, Vol. vii, read 13 C.L.J. 16 for 3 C.L.J. 16. ‡ At Col. 282, Vol. viii, read 47 for 46.

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* At Col. 1584, Vol. viii, read 15 C.L.J. 505 for 115 C. L.J. 505. † At Col. 348, Vol. ix, read 16 C.L.J. 515 for 11 C.L.J. 515. ‡ At Col. 531, Vol. vii, read 14 for 1.

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* At Col. 200, Vol. viii, read 113 for 11.

‡ At Col. 30, Vol. iv, read 585 for 335.

† At Col. 1743, Vol. viii, read 388 for 328.

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* At Col. 1418, Vol. iv, read 2 C.L.R. 339 for 3 C.L.R. 339. † At Col. 339, Vol. ix, read 414 for 144. ‡ At Col. 159, Vol. vi, read 315 for 355. § At Col. 708, Vol. viii, read 434 for 436

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* At Col. 1241, Vol. iv, read 181 for 981.

† At Col. 1850, Vol. vi, read 132 for 12.

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*At Col. 2008, Vol. vi, read 5 C.L.R. 361 for 6 C.L.R. 361. † At Col. 1893, Vol. vi, read 527 for 533. ‡At Col. 1615, Vol. viii, read 559 for 539. ‖At Col. 1969, Vol. iv, read 576 for 676. §At Col. 1743, Vol. i, read 6 C.L.R. 12 for 5 C.L.R. 12. $ At Col. 13, Vol. v, read 153 for 152. ¶ At Col. 1499, Vol. ix, read 6 C. L. R 221 for 5 C. L. R. 221. ** At Col. 608, Vol iv, at Col. 1231, Vol. ix, read 6 C. L. R. 228 for 7 C. L. R. 288 and at Col. 508, Vol. viii, read 6 C.L.R. for 7 C.L.R. 223. †† At Col. 880, Vol. vii, read 413 for 417.

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* At Col. 1899, Vol. iii, read 8 C.L.R. 6 for 8 C.L.R. 7.

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* At Col. 230, Vol. viii, read 8 C.L.R. 397 for 6 C.L.R. 397. † At Col. 1573, Vol. iii read 8 C.L.R. 443 for 8 C.L.R. 433. ‡ At Col. 263, Vol. x, read 9 C.L.R. 28 for 8 C.L.R. 28. § At Col. 381, Vol. ix, read 9 C.L.R. 288 for 9 C.L.R. 233. ‖ At Col. 575, Vol. iv, read 9 C.L. R. 324 for 9 C.L.R. 334. ¶ At Col. 1221, Vol. vi, read 9 C.L.R. 402 for 9 C.L.R. 902.

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* At Col. 93, Vols. vi and viii 751, read 10 C.L.R. 333 for 10 C.L.R. 233. † At Col. 699, Vol. iii, read 265 for 263. ‡ At Col. 1908, Vol. iii, read 320 for 326.

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* At Col. 684, Vol. ii, read 257 for 255. † At Col. 100, Vol. iv, read 12 C.L.R. 287 for 13 C.L.R. 114. ‡ At Col. 160, Vol. iii, read 453 for 455. § At Col. 1759, Vol. viii, read 559 for 539.

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* At Col. 321, Vol. i, read 595 for 395. † At Col. 1585, Vol. ii read 599 for 919. ‡ At Col. 849, Vol. vi, read 51 for 53. § At Cols. 150 of Vol. i, 2002 of Vol. vi, 1350 and 1693 of Vol. vii, read 13 C.L.R. 405 for 12 C.L.R. 405. ‖ At Col. 217, Vol. i, read 201 for 200.

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* At Col. 100, Vol. iv, read 304 for 301.

† At Col. 848, Vol. viii, read 4 C.W.N. 513 for 14 C.W.N. 513.

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*At Col. 739, Vol. i, read 263 for 265. † At Col. 88, Vol. i, read 858 for 838. ‡ At Col. 749, Vol. i, read 94 for 4.

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* At Col. 1743, Vol. vi, read 6 C.W.N. 298 for 6 C.W.N. 289.

† At Col. 62, Vol. iv, read 386 for 586.

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* At Col. 788, Vol. ix, read 7 C.W.N. 158, for 7 C.W.N. 258. † At Col. 727, Vol. i, read 286 for 287. ‡ At Col. 1160, Vol. ix, read 7 C.W.N. 441, for 1 C.W.N. 441.

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* At Col. 613, Vol. iv, read 8 C.W.N. 135 for 7 C.W.N. 135.

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* At Col. 290, Vol. viii, read 8 C. W. N. 668 for 8 C.W.N. 663. † At Col. 612, Vol. i, read 8 C.W.N. 786 for 8 C.W.N. 876. ‡ At Col. 229, Vol. i, read 79 for 179.

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* At Col. 2122, Vol. iv, read 884 for 1884. † At Col. 387, Vol. i, read 906 for 206.

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* At Col. 765, Vol. ii, read 1071 for 107. † At Col. 180, Vol. viii, read 12 C.W.N 214 for 22 C.W.N. 214. ‡ At Col. 1876, Vol. ix, read 269 for 261. § At Col. 194, Vol. viii, read 345 for 355.

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* At Col. 633, Vol. iv, read 13 C.W.N. 846 for 13 C.W.N. 845.

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* At Col. 1279, Vol. ii, read 14 C.W.N. 396 for 13 C.W.N. 396.
† At Col. 743, Vol. ii, read 14 C.W.N. 629 for 14 C.W.N. 639.

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* At Col. 723, Vol. i, read 15 C.W.N. 201 for 15 C.W.N. 210.

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* At Col. 1361, Vol. iii, read 16 C.W.N. 418 for 16 C.W.N. 227. † At Cols. 1730, 1839, Vol. vii, read 553 for 554. ‡ At Col. 1844, Vol. ix, read 209 for 201. § At Col. 834, Vol. viii, read 865 for 365. ‖ At Col. 1778, Vol. vii, read 981 for 98.

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* At Col. 1978, Vol. iii, read 13 C.P.L.R. 50 for 13 C.P.L.R. 30.

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* At Col. 373, Vol. i, read 10 Cr.L.J. 447 for 10 Cr. L.J. 15. † At Col. 348, Vol. ix, read 13 Cr. L.J. 296 for 13 Cr.L.J. 297. ‡ At Col. 1327, Vol. viii, read 1 Hay 31 for Hay 31.

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* At Col. 433, Vol. iv, read 1 Hyde 158 for Hyde 158. † At Col. 1280, Vol. v, read 2 Hyde 220 for 2 Hyde 21. ‡ At Col. 880, Vol. viii, read 1 I.A. 268 for 6 I.A. 268.

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* At Col. 880, Vol. viii, read 1 I.A. 282 for 6 I.A. 282. † At Col. 56, Vol. iii, read 1 I.A. 346 for 11 A. 346. ‡At Cols. 861 & 937, Vols. ii & v, read 3 I.A. 92 for 2 I.A. 92. § At Col. 656, Vol. vii, read 4 I.A. 15, P.C. for 4 I.A. 51, P. C. ‖ At Col. 707, Vol. vi, read 6 I A 110 for 9 I.A, 110. $ At Col. 56, Vol. i, read 7 I.A. 196 for 7 I.A. 197.

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* At Col. 434, Vol. v, read 14 I.A. 168, P. C. for 14 I.A. 68, P.C. † At Col. 1576, Vol. iv, read 17 I.A. 134 for 17 A. 134. ‡ At Col. 1586, Vol. vi, read 19 I.A. 170 for 19 A. 170.

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* At Col. 1160, Vol. ix, read 28 I.A. 46 for 22 I.A 46. † At Col. 2, Vol. ii, read 29 I.A. 38 for 29 I.A. 28. ‡ At Col. 1957, Vol. viii, read 30 I.A. 154 for 30 I.A. 54.

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* At Col. 1471, Vol. i, read 30 I. A. 209 for 30 I. A. 29. † At Col. 1888. Vol. ix, read 30 I.A. 220 for 30 I.A. 210. ‡ At Cols. 1529, 1539, Vol. i, read 31 I. A. 212 for 30 I. A. 212. § At Col. 2240, Vol. ii, read 33 I.A. 128 for 33 I.A. 528. ‖ At Col. 190, Vol. ii, read 35 I.A. 88 for 35 I.A. 83. ¶ At Col. 287, Vol. x, read 35 I. A. 139 (P. C.) for 3 I. A. 139, (P.C.)

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* At Col. 1924, Vol. vii, read 1 Ind. Cas. 7 for Ind. Cas. 7.

† At Col. 389, Vol. v, read 1 Ind. Cas. 254 for 2 Ind. Cas. 254.

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* At Col. 1722, Vol. iii, read 1 Ind. Cas. 441 for 1 Ind. Cas. 431. † At Col. 2315, Vol. iv, read 1 Ind. Cas. 523 for 11 Ind. Cas. 523. ‡ At Col. 1478, Vol. ii, read 1 Ind. Cas. 569 for 1 Ind. Cas. 509. § At Col. 1784, Vol. ix, read 1 Ind. Cas. 690 for 12 Ind. Cas. 690.

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* At Col. 737, Vol. vi, read 1 Ind. Cas. 906 for 1 Ind. Cas. 956. † At Col. 1032, Vol. viii, read 2 Ind. Cas. 31 for 3 Ind. Cas. 31. ‡ At Col. 1612, Vol. vii, read 2 Ind. Cas. 305 for 2 Ind. Cas. 805. § At Col. 280, Vol. x, read 2 Ind. Cas. 311 for 3 Ind. Cas. 311.

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* At Col. 1777, Vol. ix, read 2 Ind. Cas. 511 for 2 Ind. Cas. 516.

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* At Col. 1358, Vol. iii, read 3 Ind. Cas. 93 for 3 Ind. Cas. 98. † At Col. 1094, Vol. iv, read 3 Ind. Cas. 378 for 3 Ind. Cas 376.

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* At Col. 1207, Vol. ix, read 3 Ind. Cas. 426 for 3 Ind. Cas. 427. † At Col. 1302, Vol. ix, read 3 Ind. Cas. 484 for 3 Ind. Cas. 404. ‡ At Col. 1683, Vol. ii, read 3 Ind. Cas. 725 for 3 Ind. Cas. 338.

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* At Col. 434, Vol. i, read 3 Ind. Cas. 964 for 3 Ind. Cas. 954. † At Col. 104, Vol. vii, read 4 Ind. Cas. 56 for 4 Ind. Cas. 52. ‡ At Col. 1071, Vol. ix, read Ind. Cas. 126 for 5 Ind. Cas. 126. § At Col. 781, Vol. iii, read 4 Ind. Cas. 243 for 4 Ind. Cas. 242.

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* At Col. 32, Vol. ii, read 4 Ind Cas 452 for 1 Ind Cas 452. † At Col. 388, Vol. vi read 4 Ind Cas 501 for 4 Ind Cas. 510. ‡ At Col. 2451, Vol. ii, read 4 Ind Cas 871 for 4 Ind Cas 87

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* At Col. 614, Vol. v, read 5 Ind Cas 255 for 7 Ind Cas 255.

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* At Col. 353, Vol. x, read 5 Ind Cas 556 for 5 Ind Cas 546. † At Col. 877, Vol. ix, read 5 Ind Cas 590 for 5 Ind Cas 593. ‡ At Col. 1722, Vol. i, read 5 Ind Cas 633 for 5 Ind Cas 63. § At Col. 1073, Vol. vii, read 5 Ind Cas 664 for 5 Ind Cas 674.

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* At Col. 1057, Vol. ii, read 5 Ind Cas 835 for 5 Ind Cas 838.

† At Col. 2148, Vol. ii, read 5 Ind Cas 897 for 5 Ind Cas 797.

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* At Col. 489, Vol. viii, read 6 Ind Cas 214 for 6 Ind Cas 24.

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* At Col. 986, Vol. iii, read 6 Ind Cas 936 for 6 Ind Cas 986.
† At Col. 902, Vol. i, read 7 Ind Cas 19 for 6 Ind Cas 971.

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* At Col. 395, Vol. viii, read 7 Ind Cas 487 for 7 Ind Cas 484.
† At Col. 1915, Vol. ix, read 7 Ind Cas 751 for 7 Ind Cas 151.

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* At Col. 1067, Vol. ix, read 7 Ind. Cas. 801 for 7 Ind. Cas. 180. † At Col. 950, Vol. viii, read 7 Ind. Cas. 901 for 1 Ind. Cas. 901. ‡ At. Col. 217, Vol. ii, read 7 Ind. Cas. 957 for 1 Ind Cas. 957.

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* At Col. 1552, Vol. vii, read 8 Ind. Cas. 383 for 8 Ind. Cas. 283. † At Col. 2228, Vol. iv, read 8 Ind. Cas. 385 for 8 Ind. Cas. 384. ‡ At Col. 1789, Vol. ix, read 8 Ind. Cas. 592 for 8 Ind. Cas. 582

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*At Col. 469, Vol. ix, read 8 Ind. Cas. 764 for 8 Ind. Cas. 763. † At Col. 885, Vol. ii, read 8 Ind. Cas. 828 for 8 Ind. Cas. 823. ‡ At Col. 821, Vol. ix, read 8 Ind. Cas. 844 for 8 Ind. Cas. 344.

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* At Col. 1519, Vol. v, read 9 Ind. Cas. 541 for 9 Ind. Cas. 542. † At Col. 1774, Vol. vii, read 9 Ind. Cas. 552 for 9 Ind. Cas. 522. ‡ At Col. 768, Vol. v, read 9 Ind. Cas. 685 for 8 Ind. Cas. 685. § At Col. 1150, Vol. v, read 9 Ind. Cas. 751 for 9 Ind. Cas. 748. ‖ At Col. 1547, Vol. iii, read 9 Ind. Cas. 828 for 9 Ind. Cas. 818.

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* At Col. 910, Vol. i, read 10 Ind. Cas. 335 for 10 Ind. Cas. 325. † At Col. 597, Vol. iii, read 10 Ind. Cas. 413 for 10 Ind. Cas. 143.

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* At Col. 390, Vol. v, read 10 Ind. Cas. 464 for 10 Ind. Cas. 446. † At Col. 119, Vol. vii, read 10 Ind. Cas. 570 for 10 Ind. Cas. 571. ‡ At Col. 354, Vol. vii, read 10 Ind. Cas. 748 for 10 Ind. Cas. 749. §At Col. 478, Vol. viii, read 10 Ind. Cas. 898 for 10 Ind. Cas. 893.

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* At Col. 457, Vol. ix, read 11 Ind. Cas, 404 for 11 Ind. Cas. 104. † At Col. 1418, Vol. iv, read 11 Ind. Cas. 846 for 11 Ind. Cas. 486. ‡ At Col. 53, Vol. viii, read 12 Ind. Cas. 14 for 12 Ind. Cas. 542.

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* At Col. 1088, Vol. iv, read 12 Ind. Cas. 460 for 12 Ind. Cas. 360. † At Col. 872, Vol. v, read 12 Ind. Cas. 482 for 12 Ind. Cas. 462. ‡ At Col. 137, Vol. vii, read 12 Ind. Cas. 626 for 12 Ind. Cas. 625. § At Col. 1783, Vol. viii, read 13 Ind. Cas. 192 for 13 Ind. Cas. 188.

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* At Col. 1162, Vol. viii, read 13 Ind. Cas. 649 for 13 Ind. Cas. 642. † At Col. 1130, Vol. vii, read 13 Ind. Cas. 816 for 13 Ind. Cas. 819. ‡ At Col. 80, Vol. vii, read 13 Ind. Cas. 939 for 13 Ind. Cas. 913.

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* At Col. 1450, Vol. vii, read 15 Ind. Cas. 403 for 15 Ind. Cas. 404. † At Col. 1496, Vol. vi, read 15 Ind. Cas. 520 for 15 Ind. Cas. 590.

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* At Col. 1839, Vol. vii, read 15 Ind. Cas. 659 for 5 Ind. Cas. 659. † At Col. 1578, Vol. vii, read 15 Ind. Cas. 895 for 14 Ind. Cas. 895. ‡ At Col. 145, Vol. vii, read 16 Ind. Cas. 401 for 16 Ind. Cas. 400. § At Col. 147, Vol. vii, read 16 Ind. Cas. 405 for 16 Ind. Cas. 404. ‖ At Col. 15, Vol. ix, read 16 Ind. Cas. 587 for 15 Ind. Cas. 587. ¶ At Col. 858, Vol. ix, read 16 Ind. Cas. 680 for 16 Ind. Cas. 480.

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* At Col. 1209, Vol. ix, read 17 Ind. Cas. 17 for 17 Ind. Cas. † At Col. 1678, Vol. viii, read 17 Ind. Cas. 389 for 17 Ind. Cas. 889. ‡ At Col. 1301, Vol. ix, read 18 Ind. Cas. 363 for 15 Ind. Cas. 363. § At Col. 50, Vol. viii, read 18 Ind. Cas. 908 for 8 Ind. Cas. 908.

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* At Col. 542, Vol. viii, read 1 Ind. Jur. N.S. 122 for 1 Ind. Jur. N.S. 12. † At Col. 680, Vol. iii, read 1 Ind. Jur. N. S. 222 for 1 Ind. Jur. N. S. 22. ‡ At Col. 103, Vol. iii, read 1 Ind. Jur. N.S. 352 for 1 Ind. Jur. N.S. 350. § At Col. 1800, Vol. i, read 1 Ind. Jur. O.S. 44 for Ind. Jur. O.S. 44.

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* At Col. 92, Vol. vi, read L.B.R. 1872—1892, 500 for L.B.R. 1872—1892, 1500.

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* At Col. 1930, Vol. vi, read 1 L.B.R. 13 for L.B.R. 13.

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243	vii 768
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* At Col. 2372, Vol. iv, read 1 L.B.R. 184 for L.B.R. 184 † At Col. 855, Vol. ix, read 1 L.B.R. 257 for 1 L.B.R. 25. ‡ At Col. 1006, Vol. ix, read 2 L.B.R. 307 for 2 L.B.R. 30.

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* At Col. 898, Vol. ix, read 4 L.B.R. 88 for 4 B.L.R. 88.

† At Col. 533, Vol. viii, read 5 L.B.R. 184 for 6 L.B.R. 184.

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* At Col. 158, Vol. ii, read 1 M.H.C. 106 for 1 M. 106. † At Col. 1440, Vol. ix, read 1 M.H.C. 252 for 1 M.H.C. 652. ‡ At Col. 762, Vol. vii, read 1 M.H.C. 281 for 1 M.H.C. 285. § At Col. 112, Vol. vii, read 2 M.H.C. 108 for 2 M.H.C. 180.

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* At Col. 279, Vol. iii, read 2 M.H.C. 369 for 12 M.H.C. 369.

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* At Col. 1111, Vol. viii, read 4 M.H.C. 1 for 4 M.H.C.

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* At Col. 1669, Vol. iv, read 12 M.L.J. 299 for 2 M.L.J. 299.

† At Col. 346, Vol. ix, read 14 M.L.J. 74 for 14 M.L.J. 24.

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* At Col. 1712, Vol. ix, read 14 M.L.J. 467 for 14 M.L.J. 427. † At Col. 33, Vol. vii, read 14 M.L.J. 488 for 16 M.L.J. 28. ‡ At Col. 2220, Vol. iv, read 15 M.L.J. 245 for 15 M.L.T. 245. § At Col. 15, Vol. vii, read 16 M.L.J. 5 for 6 M.L.J. 5.

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*At Col. 451, Vol. i, read 19 M.L.J. 645 for 19 M.L.J. 648. † At Col. 1915, Vol. iv. read 20 M.L.J. 79 for 20 M.L.J. 29. ‡ At Col. 801. Vol. iii, read 20 M.L.J. 121 for 20 M.L.J. 120. § At Col. 1244, Vol. v, read 20 M.L.J. 298 for 7 M.L.T. 298. ‖ At Col. 1367, Vol. iii, read 20 M.L.J. 301 for 20 M.L.J. 306. ¶ At Col. 2135, Vol. ii, read 20 M.L.J. 760 for 20 M.L.J. 761.

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* At Col. 1986, Vol. iv. read 22 M.L.J. 231 for 201 M.L.J, 231.

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* At Col. 1408, Vol. vi, read 24 M.L.J. 258 for 84 M.L.J. 258.

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* At Col. 1738, Vol. ix, read 2 M.L.T. 75 for 2 M.L. T. 175. † At Col. 1669, Vol. iv, read 2 M.L.T. 151 for 2 M.L.T. 157. ‡ At Col. 480, Voi. vii, read 2 M.L.T. 161 for 2 M.L.T. 131. § At Col. 376, Vol. vi, read 2 M.L.T. 351 for 2 M.L.T. 350. ‖ At Col. 1210, Vol. v, read 2 M.L.T. 433 for 2 M.L.T. 1. ¶ At Col. 1326, Vol. iv, read 3 M.L.T. 1 for 17 M.L.T. 405.

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* At Col 1499, Vol. ii, read 3 M.L.T. 208 for 3 M.L.T. 203.

† At Col. 1038, Vol. vi, read 3 M.L.T. 329 for 3 M.L.T. 328.

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* At Col. 1360, Vol. iv, read 4 M.L.T. 429 for 4 M.L.T. 425.
† At Col. 338, Vol. ix, read 5 M.L.T. 55 for 5 M.L.T. 755.

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* At Col. 1223, Vol. v, read 5 M. L. T. 297 for 5 M. L. T. 247.
† At Col. 141, Vol. iii, read 6 M.L.T. 93 for 6 M.L.T. 92.

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* At Col. 807, Vol. iii, read 6 M.L.T. 360 for 6 M.L.T. 362.

† At Col. 1737, Vol. iii, read 7 M.L.T. 345 for 7 M.L.T. 245.

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* At Col. 1550, Vol. vii, read 8 M.L.T. 97 for 8 M.L.T. 57. † At Col. 1316, Vol. i, read 8 M.L.T. 245 for 7 M.L.T. 245. ‡ At Col. 1021, Vol. ix, read 8 M.L.T. 251 for 8 M.L.T. 151.

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* At Col. 614, Vol. viii, read M.W.N. 1912, 918 for M.W.N. 1912, 919.

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* At Col. 686, Vol. iii, read Marsh 311 for Marsh 3. † At Col. 1968, Vol. iii, read Marsh 377 for Marsh 337. ‡ At Col. 111, Vol. iv, read 1 M.I.A. 19 for 10 M.I.A. 19.

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* At Col. 1509, Vol. vi, read 10 M.I.A. 196 for 10 M.I.A. 194. † At Col. 217, Vol. viii, read 10 M.I.A. 540 for 10 M.I.A. 322.

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*At Col. 196, Vol. viii, 113, Vol. x, read 8 Moo. P. C. 90 for 8 Moo. P. C. 110. † At Col. 1582, Vol. iii read 13 Moo. P.C. 209 for 13 Moo. P.C. ‡ At Col. 1583, Vol. vi, read 2 N.L.R. 158 for 236 L.R. 158.

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* At Col. 2353, Vol. iii, read 6 N.L.R. 50 for 6 N.L.R.51.

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* At Col. 530, Vol. vii, read 8 N.L.R. 136 for N.L.R. 136. † At Col. 317, Vol. iv, read 1 O. C. Supp. 60 B, for 1 O. C. Sup. Vol. 61.

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* At Col. 1484, Vol. i, read 2 O.C. 213 for 2 O.C. 13.

† At Col. 1627, Vol. i, read 3 O.C. 308 for 3 O.C. 301.

‡ This should be 30 C. 683.

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* At Col. 1836, Vol. i, read 5 O.C. 146 for 6 O.C. 146.

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* At Col. 1405, Vol. vi, read 9 O.C. 196 for 9 O.C. 106.

† At Col. 2050, Vol. vi, read 10 O.C. 33 B, for 10 O.C. 32.

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* At Col. 1545, Vol. iii, read 13 O. C. 388 for 13 P. C. 388. † At Col. 2397, Vol. ii, read 14 O. C. 327 for 14 O C 237.

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* *N. B.*—The citation of cases from the Punjab Record, Punjab Law Reporter and the Punjab Weekly Reporter are by the No. of cases and not by pages. Hence the figures under each year's Punjab Record denote the No. of cases and not the page of the Report.

† At Col. 156, Vol. viii, and Col. 1377, Vol. ix, read 106 P.R. 1866 for 1 P.R. 1866, O.J.

‡ At Col. 257, Vol. v, read 16 P.R. 1866, Civ. Ref. for 16 P.R. 1866, Civ. Ref.

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* At Col. 1728, Vol. iii, read 46 P R 1868 for 46 P R 1861.

† At Col. 1400, Vol. ix, read 49 P R 1868 for 149 P R 1868.

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21	i 285
22	i 1904
23	viii 455
24	viii 1721
25	i 1741
26	vii 1269
27	ii 1666
28	ix 1218
29	ii 1906
30	iii 1716
31	vi 1361
32	ii 1858
33	i 1335
34	vii 1977
35	viii 948
36	i 1918
37	v 104, 119, viii 421, 423
38	viii 1774
39	i 1329
40	i 38
41	ii 1672
42	ix 573
43	ix 561
44	i 229
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47	viii 546
48	viii 1183
49	vi 683
50	i 1853
51	viii 1634
52	iii 66
53	vi 1093
54	vii 1711
55	iii 943
56	vii 1489
57	iii 2001
58	vi 1301
59	iv 634
60	viii 102
61	vi 1325, 1445
62	iv 416, 564, viii 156
63	iii 1195
64	vi 205
65	vii 712
66	ix 590
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14	vii 1591
15	i 1779
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18	iii 1200
19	iii 977
20	ii 812
21	viii 430
22	iii 1094
23	vi 10, 974, viii 1609
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26	iii 976
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* At Col. 622, Vol. iii, read 4 P.R. 1870, Rev. for 4 P.R. 1870.

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33	iii 977, 1092
34	iii 1245, vii 1454
35	viii 1624
36	viii 1655
37	vi 1446
38	viii 946
39	vii 1352
40	iii 1092
41	viii 1323
42	v 222
43	ix 584
44	vii 789
45	vi 2008
46	i 42
47	i 1344
48	vii 1440
49	i 1334
50	ix 1956
51	iii 266
52	iv 911
53	i 1337
54	ii 255
55	ix 504
56	iii 1093, 1194
57	iii 974
58	ix 595
59	vii 758
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3	viii 1575
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6	iii 840
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8	v 1394, 1403
9	iv 1482, ix 554
10	vi 269
11	vi 2061
12	vii 1848
13	iii 976
14	viii 419
15	i 38
17	vi 194
18	ix 547
19	v 1391
20	i 1324
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25	iii 1194
26	ii 493
27	ix 422
28	ii 90
29	ix 733
30	iii 1199
31	iii 976
32	i 1345
33	iv 21
34	vii 1194
35	viii 1519
36	vii 921
37	iii 1109, viii 455
38	iv 2113
39	ii 199, v 450
40	viii 420
41	ii 87
42	v 107
43	i 1337
44	i 1339
45	iii 197
46	i 6, vi 903
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48	vii 1428
49	v 425
50	v 776
51	iii 1108
52	viii 1653
53	vi 1446
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56	vi 50
57	vii 630
58	iii 1429, viii 1620
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60	viii 1951
61	viii 1722
62	vi 253, vii 1187, 1205
63	ii 223
64	iv 1769
65	iii 1100
66	iii 295, vii 1292, viii 1436
67	iv 1223
68	ix 568
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70	i 245
71	vi 1959
72	viii 146
73	viii 419
74	viii 1651
75	iii 1197
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39	ix 424
40	viii 557
41	vi 1447
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43	iv 21
44	v 1111
45	iii 977
47	iii 267
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50	iii 975, 976
51	v 107
52	iv 578
53	ii 2289, vi 1781
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59	iii 977
60	i 1338
61	vi 564
62	i 1331
63	iii 508
64	ix 959
65	ii 1246
66	vi 235
67	i 1350
68	i 42
69	ix 589
70	vii 1412
71	ix 594
72	v 1374
73	i 42
74	vi 562
75	vii 218
76	viii 947
77	viii 108
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80	vi 1475
81	iii 1199
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4	ix 1867
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6	vi 683
7	vii 1193
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25	iii 1094
*26	iii 1109
27	viii 419
28	v 1366
29	vii 1849
30	ix 566
31	viii 1580
32	ii 1812
33	v 1073
34	vii 1890
35	ix 599
36 (F B)	viii 334
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38	vii 1977
39	x 29
40	ix 451
41	ii 141
42	iii 1093, 1107
43	vi 422
44	iii 157
45	v 425
46	i 41
47	i 1916
48	i 1920
49	viii 314
50	iii 976
51	i 1339, v 554
52	iii 977
53	vi 1461
54	viii 1901
†55	ix 506
56	vii 1451
57	vii 718
58	vii 748
59	i 1864
60	ix 219
61	iv 215, ix 422
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63	vii 1486
64	viii 102
65	ii 2183
66	ii 223
67	i 1340
68	ix 176
69	vi 214
70	viii 1198
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72	vi 1927
73	ix 578
74	vii 1849
75	i 40
76	vi 1446
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83	iii 1703
84	iii 1689
85	ix 503
86	ii 458
87	iii 2001
88 (F B)	ix 648
89	v 1326
90 (F B)	ix 535
91	vii 1890
92	ix 502
93	v 576
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9	viii 1767
10	ix 274
11	ix 648
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13	vi 683
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15	viii 1510
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21	i 39
22	viii 1772
23	iii 977
24	iv 2110
25	ii 1702
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27	v 594
28	v 593
29 (F B)	vii 218
30	i 1345
31	vii 759
32	vii 1397
33	ix 1199, x 258
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35	vi 220

* This is wrongly printed as 6 P.R. 1875, with its names at Col. 1109, Vol. iii.
† At Col. 506, Vol. ix, read 55 P.R. 1875, for 55 P.R. 1857.

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42	iii 1429
43	vi 1826
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48	i 1916
49	i 38
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51	vi 1174
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53	v 500
54	i 37
55	vii 923
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57	ii 190
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59	ii 458
60	ii 245
61	vii 1891
62	iii 1235
63	v 1391
64	iii 294
65	ix 747
66	vii 34
67	i 1338
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70	iv 1214
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75	iv 564, viii 157
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77	iv 1205
78	viii 1773
79	ii 105
80	v 1592, vi 903
81	viii 1034
82	iii 1094
83	ix 1178
84	ix 1032
86	ix 1043
87	viii 455
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89	vi 1210
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91	iv 2113
92	i 1345
93	i 1875
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99	iii 1717
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101	viii 1608, 1633
102	iii 1193
103	v 899
104	vi 1863
105	iii 1193
106	i 1930
107	iii 1101
108	x 202
109	ix 526
110	vii 1001, ix 576
111	iii 1398
112	iii 1429
113	i 1920
114	viii 1632
115	i 39, v 335
116	iii 1092
117	ii 184
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119	vii 525
120	vii 1122
121	iii 1094
122	i 1806
123	i 1969
124	vi 1506
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2	iii 1091
3	iii 1764
4 (F B)	vii 1154
5	vii 1270
6	vi 564
7 (F B)	viii 949
8	viii 523
9	iii 1193
10	vii 748
11	vii 1891
12	iii 1235
13	ix 1867
14	iv 1797
15	ix 1194
16	iii 1194
17	vii 1091
18	viii 1514
19	i 1323
20	ii 245
21	iii 1728
22	viii 1100
23	iii 1107
24	iii 1418
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29	viii 1034
30	ix 1468
31	vi 50
32	ix 573
33	viii 1195
34	ix 452
35	i 1344
36 (F B)	viii 142
37 (F B)	viii 87
38	iii 1284
39	i 1340
40	i 1335
41	vi 564
42	i 1338
43	iii 1110
44	viii 1891
45	iii 734
46	iv 1815
47	i 1343
48	v 618
49	iii 259
50	ix 1524
51	iv 268
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53	i 1348
54 (F B)	vi 1270
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56	viii 1298
57	ix 560, 561
58	viii 558
59	viii 1722
60	viii 534
61	vi 988
62	i 1919
63	ix 569
64	i 1323
65	i 1330
66	ii 1858
67	ii 1945
68	iii 1430
69	v 618
70	iii 849, 1418
71	ii 107
72	viii 406
73	viii 1905, ix 537
74	iii 1094
75	ix 517
76	vii 273
77	viii 1186
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88	ix 583
89	viii 1722
90	ii 1634
91	ix 671
92	ix 1155
93	vi 987
94	vii 1891
95	ix 562
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9	ii 1661
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13	iv 1770
14	iv 1810
15	vii 1119
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19	vi 633
20	viii 1508
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23	ii 813
24	iii 620
25	vi 366
26	ii 1858
27	i 306
28	ii 101, vi 254
29	vi 400
30	viii 152
31	i 1335
32	ii 1733
33	vi 2061
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48	i 1919
49	i 1348
50	i 1336, 1337
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52	vi 224
53	ii 590
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56	iii 1193
57	ii 107
58 (F B)	viii 88
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60	iii 1200
61	i 1919
62	iii 1108
63	iv 223
64	ix 547
65	i 1354
66	iii 1094
67	ix 1036
68	iii 1193
69	iii 1199
70	iii 974
71	vi 1326
72	iii 976
73	ix 1173
74	ii 492
75	ix 1408
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77	iii 976
78	vi 986
79	i 1342
80	iii 976
81	vii 1342, viii 1181
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2	i 1741
3	iii 1091
4	i 1906
5	iii 975
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19	vi 1743
20	vii 526
21	viii 1272
22	i 1324
23	ix 646
24	iii 1192
25	iii 466
26	iv 634
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27 (F B)	viii 1346
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32	viii 1892
33	vii 773
34	iii 1193
35	vi 1812
36	vii 1382
37	i 1345
38	iii 1198
39	vi 71
40	vi 1811
41	iii 1109
42	iii 1110
43	iii 974
44	iii 1199
45	viii 1186
46	vi 239
47	vi 2073
48	i 1809
49	iii 1101
50	iii 977
51	iii 466
52	i 1780
53	vi 1774
54	v 1593, vi 904
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56	iii 1199
57	i 1871, ii 184
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61	vi 1299
62	i 1355, ix 7
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64	iii 1235
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* At Col. 775, Vol. v, read 4 P.R. 1877, Rev. for 4 P.R. 1887, Rev. † At Col. 819, Vol. ii, read 36 P.R. 1878 for 136 P.R. 1878. ‡ At Col. 1871, Vol. i, read 67 P.R. 1879 for 87 P.R. 1879.

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76	iii 1198
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79	vi 735
80	viii 1675
81	iii 1197
83	ii 653
84	iii 1110
85	ix 36
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87	iii 1194
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92	iii 974
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94	iii 1430
95	vi 1488
96	i 1802
97	iii 973
98	iv 1724
99	i 1340
100	i 1916
101	ii 609, iii 1119
102	ii 70, vii 1537
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104	vi 1860
105	ix 445
106	ii 457
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108	iii 975
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110	ix 1953
111	v 776
112	vii 1712
113	i 1918
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137	iii 1109
138	ix 558
139	i 1918
140	vi 1994
141	i 1919
142	ix 1427
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144	viii 1646
145	v 292
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147	i 1916
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155	iii 267
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157	vi 1502
158	vi 2028
159	i 1341, iii 1093
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161	i 1918
162	vii 1592
163	iv 1891
164	iii 1110
165	ix 989
166	iii 1109
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2	vi 1580
3	ix 448
4	vii 725
5	viii 504
6	viii 969
7	vi 1802
8	ix 562
9	ix 1194
10	viii 678
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28	viii 1605
29	viii 574
30	viii 1503
31	vii 1857
32	vi 987
33	vii 1579
34	ix 195
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39	vii 839
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43	vi 1337
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47	viii 1572
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49	viii 1719
50	vi 1802
51	vi 682
52	vii 1836
53	viii 504
54	vii 1755
55	vii 1756
56	i 1345
57	ix 1193
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60	viii 526
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62	viii 1565
63	ix 374
64	vi 1811
65	x 203
66	vi 1489
67	viii 1723
68	vi 364
69	vi 809
70	vii 115
71	vi 1337
72	viii 1116
73	viii 1892
74	ix 556
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77	vii 1990

* At Col. 1101, Vol. iii, read 118 P.R. 1879 for 188 P.R. 1879.

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85	vii 526
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96	vi 1376
97	vi 407, vii 1934
98	vii 1857
99	vii 767
100	viii 507
101	vi 559
102	viii 448, ix 1033
104	viii 1686
105	viii 1719
106	vii 1990
107	ix 1309
108	viii 1395
109	vi 1363
110	vi 682
111	x 336
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113	vii 139
114	ix 423
115	vii 1419
116	vi 2059
117	vii 526
118	viii 1394
119	ix 312
120	i 1337
121 (F B)	viii 1441
122	viii 1562
123	vi 1398
124	vi 995
125	vi 1654, ix 1290
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3	i 1327
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10	i 1332
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13	i 1339
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2	iii 1086
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5	viii 1617
6	i 1330
7	vi 1398
8	iii 63
9	ix 923
10	vi 405
11	viii 1951
12	vii 1194
13	viii 1695
14	viii 1213
15	iii 950
16	vii 1892
17	viii 691
18	iii 1131
19	vi 1435
20	vii 1893
21	iii 1185
22	vii 1894
23	i 1334
24	ii 55
25	i 150
26	ii 92
27	vi 719
28	ix 520
29	iii 980
30	i 1341
31	iii 1171
32	vi 244
33	i 2023
34	iii 1032
35	vii 1894
36	iii 1129
37	i 2029
38	i 228
39	viii 1762
40	vi 497
41	vi 509
42	i 1326
43	i 1326
44 (F B)	ix 995
45	iii 1053
46	iv 374
47	viii 1943
48	iii 64
49	vii 1789
50	ii 351
51	iii 949
52	v 1173
53	iii 1101
54	i 367

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56	iii 1081
57	iii 964
58	v 145
59	ix 515
60	viii 1580
61	v 1043
62	vi 297
63	i 317
64	v 382
65	iii 1136
66	iii 957
67	vii 1849
68	ii 1831
69	vii 1849
70	i 2023
71	v 456
72	i 2023
73	iii 1391
74	iii 194
75	i 1978, vii 1895
76	i 1969
77	iii 1148
79	vii 1850
80	viii 691
81	ii 2258
82	i 1341
83	vi 378
84	viii 1812
85	iii 1130
86	vi 692
87	i 1339
88	iii 950
89	viii 1355
90	vi 817
91	i 1339
92	v 384
93	i 1336
94	vii 717
95	viii 1349
96	viii 1363
97	ix 602
98	vi 587
99	ix 306
100	viii 1814
101	iii 1058
102	vii 1895
103	vi 110
104	iii 1136
105	iii 1163
106	viii 247
107	vi 1176
108	i 1328
109	i 16
110	ii 661
111	ii 351, 367, viii 1580, 1581
112	vi 110
113	vii 1897
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116	vi 531
117	i 1990
118	v 455
119	ii 2174
120	iii 958
121	i 1329
122	i 57
123	ix 928
124	vi 392
125	ix 563
126	vii 1345
127	vii 34
128	viii 1598
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3	v 842
4	i 1332
5	v 842
6	i 1971
7	v 842
8	vii 1225
9	v 842
10	v 841
11	vii 1105
12	v 841
13	v 841
14	v 841
15	vii 1105
16	v 840
17	vi 1298
P.R. 1882—	
1 Civil	ii 160
2	v 52
3	vi 243
4	i 1874
5	ix 520
6	iv 547
7 **(P C)**	iii 215
8	vii 1825
9	iii 64
10	ix 902
11	iii 1132
12	iii 1176
13	i 1339
14	vii 1896
15	vi 887
16	v 690
17	iii 1129
18	i 1323
19	iii 1241
20	iv 665, 957, viii 1826
21	iii 1205
22	i 1329
23	vi 406
24	viii 1275

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26	ii 709
27	iii 1101
28	ix 533
28, Note	ix 533
29	vii 1126
30	vi 1064
31	iii 941
32	i 1325
33	vi 282
34	v 966
35	iii 966
36	iii 61
37	viii 728
38	ix 526
39	viii 927
40	v 237
41	ii 288
42	vi 1995
43	ii 708
43, Note	ii 708
44	vi 1006
45	iv 380
46	vii 1896
47	iii 1026
*48	i 2023
49	iv 200
50	ii 1358
51	x 326
52	vi 1029
53	iii 1188
54	vii 1896
55	ii 188
56	vii 1896
57	vi 1436
58	vi 348
59	vii 92
60	iii 477
61	iv 249
62	viii 1729
63	iii 1368
64	viii 1202
65	i 1972
66	i 106
67	iii 1047
68	i 257
69	vii 1850
70	ix 924
71	iii 1129
71, Note	iii 1129
72	iii 949
73	iii 58
74	i 1936
74, Note	vi 972
75	vii 1540
76	i 1918
77	ii 351

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79	iii 944
80	iii 1128
81	i 1337
82	x 42
83	i 1331
84	vii 266
85	iii 63
86	vi 1409
87	vi 1440
88	vi 738
89	vi 72
90	i 1334
91	ii 54
91, Note	ii 54
92	viii 1770
93	ii 304
94	viii 1592
95	iii 1178
96	iv 547
97	vii 757
98	iii 1237
99	ii 2254
100	ii 2234
100, Note	ii 2234
101	i 268
102	ix 996
103	vii 1712
104	iii 2016
105	iv 593
106	vii 1897
107 **(F B)**	vii 1732
108	viii 1394
109	iii 972
110	vii 1291
111	viii 1226
111, Note (*a*)	viii 1227
111, Note (*b*)	viii 1227
111, Note (*c*)	viii 1227
111, Note (*d*)	viii 1228
112	vii 1897
113	vi 1029
113, Note	vi 1029
114	vii 1897
115	ii 754
116	i 1329
117	vii 1898
†118	viii 1347
119	iii 963
120	vi 1419
121	ii 715
122	ii 708
123	ii 708
124	i 1979
125	ii 2229
126	iii 1100
126, Note	iii 1100

* At Col. 2023, Vol. i, read 48 P.R. 1882 for 42 P.R. 1882.
† At Col. 1347, Vol. viii, read 118 P.R. 1882 for 18 P.R. 1882 (F.B.).

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128	iii 1056
129	iii 957
130	ii 153
131	v 690
132	vii 279
133	i 1974
134	viii 1905
135	iii 346
136	iv 1898
137	i 1328
138	ix 924
139	vii 282
140	iii 1622
141	vi 891
142	ii 1620
143	iii 1164
144	iii 1417
145 (F B)	viii 1596
146	iii 1100
147	v 516
148	iii 59
149	ii 614
150	v 156
151	vi 1175
152	iii 62
153	iii 2048
153, Note	iii 2048
154	vii 1898
155	iii 1988
156	vi 405
157	ii 715
158	i 1992
159	vii 816
160	iii 515
161	ii 2213
162	iii 1170
163	iii 1190
164	v 619
165	i 1993
166	iv 1213
167	ix 549
168	viii 1141
169	iii 1977
170	iii 952
171	vii 254
172	iii 1165
173	vii 84
174	ii 459
175	iii 419
176	iii 1162
177	ix 528
178	vii 1851
179	vi 1051
180	viii 1730
181	x 307
182	viii 1855
183	i 1325
184	i 2023
185	i 1985

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187	viii 1746
188	i 1975
189	vii 1899
190	vi 1075
191	ii 161
192	x 99
193	iii 63
194	vi 2087
195	iv 437
196	vii 1899
197	ii 459
198	iii 951
199	iii 454
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1 Civil	iii 1047
2	iii 1046
3	ii 140
4	ix 519
5	ii 171
6	iii 791
7	iii 1674
8 (F B)	ix 515
9	i 1968
10	vi 586
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12	vii 1900
13	iv 1420
14	iii 1030
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16	iii 1024
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18	i 1340, viii 1806
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20	vi 679
21	ii 1073
22	iv 729
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24	i 1324
25	vi 508
26	viii 1956
27	x 335
28	v 1422
29	iii 1206
30	viii 1960
31	vii 272
32	vii 263
33	i 1971
34	i 1342
34, Note (*a*)	i 1342
34, Note (*b*)	i 1342
34. Note (*c*)	i 1342
34, Note (*d*)	i 1342
35	i 1341
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39	i 1340
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42	iv 744
43	iii 1060
44	vii 1900
45	i 1341
46	vii 1901
47	i 2024
48	vii 1900
49	iii 1178
50	i 1326
51	iii 1039
52	viii 682
53	i 286
54	i 1937
55	vii 283
56	vi 549
57	vi 984
58	i 1990
59	ix 925
60	i 1921
60, Note	i 1921
61	i 1343
62	i 1949
63	iv 1693
64	iii 958
65	vi 409
66	i 1979
67	viii 653
68	vii 104
69	viii 1202
70	iv 1378
70, Note	iv 1378
71	ii 93
72	ii 754
73	iii 61
74	viii 683
75	vii 452
76	iii 1032
77	i 1336
78	viii 1207
78, Note	viii 1208
79	iv 1338
80	v 373
81	vii 24
82	i 1343
83	vi 377
84	iv 1844
85	ix 559
85, Note	ix 559
86	i 1329
87	ix 571
87, Note	ix 576
88	i 1343
89	iii 301, viii 1960
90	i 1328
91	iii 1053

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93	viii 671
94	i 430
95	viii 1203
96	iii 946
97	ix 534
98	iii 971
99	iii 57
100	i 1993
101	vii 1852
102	viii 704
102, Note	viii 704
103	iii 232
104	viii 1165, 1204
104, Note (*a*)	viii 1165
105	i 339
106	vi 379
106, Note	vi 379
107	viii 1575
108	vii 791
109	i 2024
110	ix 926
111	iii 802
112	v 1047
113	iii 1079
114	viii 1689
115	iii 1428
116	viii 1959
117	vii 1901
118	iii 1100
119	iii 1029
120	vi 243
121	i 1329
122	vi 927
123	v 690
124	vi 846
125	v 619
126	iii 1068
127	iii 1039
128	i 1328
129	iii 1004
130	i 2023
131	vii 1308
132	v 495
133	iii 1170
134	vi 851
135	iii 302
136	i 1344
137	iii 1141
138	i 1341
139	iii 372
140	iii 1100
141	i 9
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149	iii 964, iv 1467
150	iii 476
151	iii 64
152	i 1777
153	iv 1229
154	viii 1742
155	vi 623
156	i 1971
157	vii 1901
157, Note	vii 1902
158	iii 1142
159	viii 696
160	vi 391
161	iii 2000
162	iii 958
163 (**F B**)	viii 1283
164	i 1806
165	vi 1989
166	ix 525
167	iii 956
168	vi 1051
169	iv 265
170	i 2024
171	vi 679
172	iii 964
173	iii 971
174	iii 964
175	iii 1148
176	i 1330
177	iii 1050
178	iii 964
179	vii 1151
180	vi 356
181	v 153
182	iii 1427
183	ix 214
184	vi 1298
185	vi 293
*186	ii 226
187	iii 1179
188	vi 580
189	vii 1902
190	viii 1337
191	vii 1283
192	iii 1133
193	i 1330
194	v 1328
195 (**F B**)	ix 978
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3	v 841
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6	i 2029
7	i 1346
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5	iii 1179
6	iii 63
7	iii 1100
8	i 1329
9	iii 1148
10	vii 1902
11	vii 1903
12	vii 1903
13	iii 1065
14	iii 1130
15	iii 1148
16	vii 46
17	vii 1903
18	iii 858
19	iv 532
20	iii 1099
21	i 1326
22	iii 1002
23	iii 1185
24	iii 946
25	viii 1205
26	x 121
27	iii 962
28	vii 805
29	viii 1372
30	iv 264
31	vi 110
32	x 76
33	iii 832
34	iii 1083
35	ii 171
36	iii 949
37	iii 59
38 (**F B**)	i 1332
39	iii 1181
40	vi 1758
41	vi 1140
42	iii 58
43	iii 1078
44	iii 1185
45	iii 1130
46	v 154
47	viii 1950
48	vi 412
48, Note	vi 412
49	vi 910
50	iii 1002
51	iii 1080
52	iii 994
53	iii 1041
54	viii 1496
55	vi 813
56	viii 1812
57	ii 265

* At Col. 226, Vol. ii, read 186 P.R. 1883 for 1886 P.R. 183.

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59	vi 208
60	iii 1937
61	iii 1053
62	iii 1068
62, Note	iii 1068
63	ii 94
64	iv 1863
65	vii 1200
66	ix 926
67	iii 1030
68	vi 406
69	vii 1935
70	v 691
*71	viii 1690
72	viii 566
73	iii 63
74	i 1341
75	viii 1878
76	i 16
77	vi 1222
78	iii 1207
78, Note	iii 1207
79	vi 380
79, Note (*a*)	vi 380
79, Note (*b*)	vi 380
79, Note (*c*)	vi 380
80	ii 1720
81	iii 1120
82	viii 609
82, Note	viii 609
83	iii 1428
83 (**F B**)	viii 1891
84	v 691
85	iii 1167
86	iii 513
87	iii 64
88	vi 1194
89 (**F B**)	iii 1113
90	vii 1357
91	vii 1358
92	iii 1040
94	vi 927
95	iii 1113
96	vii 1847
97	vi 275
98	iii 969
99	vi 324
100	viii 1960
101	iii 1002
102	iii 961
103	vii 1540, viii 1923
104	i 1324
105	viii 1724
106	iii 1002
107	iii 1065
108	iii 1002
109	vi 277

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110 Civil	iii 1149
111	vi 733
112	vi 967
113	iii 1165
114	vii 1903
115	i 2020
116	iii 1174
117	iii 1006
118	iii 1143
119	iii 62
120	iii 967
121	i 9
121, Note	i 9
122	iii 1081
123	iii 1141
124	i 1333
125	iii 1120
126	viii 698
127	iii 1120
128	iii 1060
129	i 1963
130	iii 950
131	iii 1067
132	vi 1504
133	vi 1015
134	viii 1571
135	iii 1178
136	iii 1174
137	iii 994
138	vii 1904
139	ii 1806
140	vi 52
141	iii 908
142	viii 1360
143	ix 599
144	iv 1844
145	viii 1393
146	iii 1189
147	i 1332
148	iii 1425
149	vii 23
150	iii 909
151	iii 994
152	iii 1065
153	vii 1904
154	iii 957
155	vi 1679
156	viii 1773
157	ix 209
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165	iii 967
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6	v 840
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3	iii 1079
4	viii 1819
5	iii 956
6	iii 909
7	iii 60
7, Note	iii 60
8	ix 530
8, Note	ix 523
9	iii 1189
10	iii 1113
11	iii 1031
12	i 1344
13	vii 1904
14	viii 701
15	ix 925
16	iii 1155
17	iii 1036
19	vi 979
20	vii 1904
21	viii 1676
22	i 16
22, Note	i 16
23	iii 1079
24	v 619
25	ii 2257
26	iii 997
27	viii 1876
28	ii 1125
29	vi 1194
30	v 119
31	iii 1100
32	iii 1429
33	vii 1904
34	ix 1248
35	iii 955
36	vi 914
37	ix 924
38	i 9
39	i 17
39, Note	i 17
40	iii 1239
41	iii 1155
42	iii 984
43	ii 2222
44	viii 1724
45	iii 1169
46	ii 95
47	ii 1700

* At Col. 1690, Vol. viii, read 71 P.R. 1884 for 71 P.R. 184.

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49	iii 511
50	iii 1160
51	iv 437
52	iii 1163
53	iii 996
54	v 691
55	iii 476
56	vii 1904
58	vii 1904
59	iii 1078
60	iii 500
61	vi 406
62	iii 1121
63	iii 1120
64	viii 1682
65	iii 58
66	vi 1006
67	i 1330
68	ix 158
69	vii 1904
70	ii 95
71	i 1362
72	viii 1336
73	vi 246
74	iii 58
75	ix 525
76	iii 1080
77	iii 1119
77, Note	iii 1119
78	vii 23
79	iii 1239
80	iii 1141
81	iii 1141
82	iii 1189
83	ii 400
84	iv 416
85 (**F B**)	ix 1000
86	iii 961
87	vi 1478
88	i 310
89	iii 1125
90 (**F B**)	viii 709
90, Note	viii 709
91	vi 137
92	ii 160
93	iii 1081
94	ii 1365
95	vi 532
96	iv 533
97	viii 1571
97, Note	viii 1571
98	iii 1149
99	viii 442
100	vii 1905
101	ii 391
102	ii 2291
103	vi 415

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104 Civil	i 1329
105	iii 1143
106	vi 55
107	iii 996
108	iii 1031
109	iii 970
110	viii 1745
111	vii 1905
112	ii 197
113	iii 1207
114	vii 255
115	ii 2235
116	iii 1071
117	viii 794
118	iii 275
119	iii 909
120	iii 964
121	iii 58
1 Rev	vi 1298
2	v 840
3	vii 1225
4	ix 988
5	v 842
6	x 461
7	ix 983
8	v 840
9	vii 1104
10	v 840
11	v 619
12	vii 1118
13	x 462
14	v 840
P.R. 1886—	
1 Civil	iii 1189
2	viii 1955
3	iii 1038
3, Note	iii 1038
4	iv 515
5	ix 514
6	viii 1341
7	iii 1082
8	vi 333
9	i 1326
10	vii 1905
11	ix 516
12	viii 1767
13	iv 374
14	ii 2047
15	iii 1062
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18	i 9
*19	i 1339
20	iii 954
21	iii 346
22	viii 1692
23	iii 969

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24, Note	i 1370
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28	ii 55
29	viii 1665
30	vi 59
31	i 2020
32	vii 61
33	iii 964
34	iii 1239
35	ix 556
36	vi 282
37	ix 589
38	vi 366
39	iii 1063
40	iii 63
41	iii 360
42	iii 1125
43	iii 961
44	vi 597
45	iv 532
45, Note	iv 532
46	viii 1682
47	ix 927
48	iii 1119
49	iii 1030
50	v 594
50, Note	v 594
51	i 17
52	iii 1135, v 573
53	iii 1179
54	iii 58
55	i 1964
56	ii 171
57	iii 958
58	ii 2222
59	ii 2348
60	iv 1360
61	ii 938
62	i 1972
63	vi 208
64	vii 1905
65	vi 394
66	v 383
67	ii 171
68	iii 1295
69	ix 593
70	viii 1670
71	iii 858
72	vii 1905
73	ix 983
74	v 756
75	iii 1142
76	ii 1365
77	iii 1056
78	i 1991

* At Col. 1339, Vol. i, read 19 P.R. 1886 for 9 P.R. 1886.

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80	iii 789
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81, Note	i 17
83	i 1963
84	iii 964
85	iii 955
86	i 18
87	v 383
88	ii 1108
89	iii 1136
90	vi 415
91	ix 581
91, Note (*a*)	ix 581
91, Note (*b*)	ix 581
91, Note (*c*)	ix 581
92	vi 56
93	i 1372
94	v 458
94, Note	v 458
95	ii 1944
96	vi 556
97	i 430
98	v 458
99	iii 1073
100	iii 1003
101	iii 1205
102	viii 1686
103	vi 1009
104	ii 1107
105	vi 391
106	iii 1048
107	iii 1124
108	vii 1905
109	ii 1516
110	ii 1817
111	viii 1682
112	v 966
113	iii 1124
114	iv 391
115	i 1975
116	iii 1063
118	viii 1954
119	iii 1030
120	iii 1003
121	iii 1084
122	ii 2260
123	vi 391
124	iii 972
125	iii 1428
126	i 1963
127	ii 940
128	iii 964
2 Civ. Ref.	ix 531
1 Rev.	x 462
2	v 840
3	vii 1118

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P.R. 1886—	
4 Rev.	x 462
5	v 840
6	v 839
7	i 1778
8	v 839
9	v 839
10	vi 1299
11	ii 164
12	v 691
13	x 462
14	v 839
15	x 462
P.R. 1887—	
1 (F B) Civil	x 29
2	ix 525
3	vi 369
4	i 1362
5	x 34
6	ii 2420
7	ii 2346
9	iii 941
10	vii 1947
11	v 691
12	ii 1107
13	iii 1051
14	v 119
15	ii 1395
16	v 1200
17	ix 448
18	iii 1011
19	iii 1046
20	vi 280
21	ix 596
22	vi 34
23	i 313
24	vii 1905
25	v 442
26	x 33
*27	ii 2257, ix 495
28	iii 954
29	ii 2163
30	vii 1906
31	ii 2216
31 (F B)	ii 1083
32 (F B)	i 1930
33 (F B)	ix 576
34	ix 534
35	i 265
36	i 1932
37	iii 61
38	vi 1354
39	iii 1048
40	ii 2365
41	vi 2044
42	ii 2147
43	ix 599

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P.R. 1887—	
44 Civil	vi 1995
45	v 121
46	iii 366
47	ii 1117
48	ix 888
49	ii 1827
50	ix 541
51	ix 535
52	x 33
53	vi 34
54	ii 1227
55	i 1367
56	iii 1077
57	viii 111
58	iii 1022
59	v 135
60	vi 253
61	ii 1534
62	i 259
63	vii 1353
64	vii 1906
65	ii 2365
66	v 333
67	ii 1524
68	iii 1152
69	iii 996
70	viii 743
71	iii 1180
72	vi 2017
†73	i 1326
74	ix 578
75	iii 1055
76	viii 562
77	iii 653
78	ix 507
79	viii 1442
‡80	ii 1067
81	iii 988
82	iii 1176
83	ii 1080
84	iii 1127
85	iii 1133
86	ix 572
87	ii 1125
88	v 119
89	iii 1039
90	vii 1839
91	v 397
92	i 1342
93	ii 2172
94	ii 837
95	i 1371
96	x 46
97	ii 1101
98	ii 2365
99	ii 1110
100	i 1342

* At Col. 495, Vol. ix, read 27 P.R. 1887 for 27 P.R. 1889. † At Col. 1326, Vol. i, read P.R. 1887 for 73 P.R. 1889. ‡ At Col. 1067, Vol. ii, read 80 P.R. 1887, for 10 P.R. 1887.

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P R. 1887—	
101 Civil	vii 1852
102	v 756
103	ix 568
104	iii 987
105	vii 1947
106	iii 465
107	iii 985
108	ix 575
109	ii 2364
110	i 1328
111	ix 501
1 Rev.	ix 146
2	i 1345
3	x 462
4	vi 1300
5	viii 1814
6	x 463
7	i 1331
7, Note	i 1331
8	vii 1118
9	i 1336
9, Note	i 1336
10	i 1336
10, *Note* (*b*)	i 1336
11	i 1336
P.R. 1888—	
1 Civil	iv 1750
1 (**P C**)	iv 1225
2	iii 1142
3	iii 1188
4	iii 1132
5	ii 2084
6	i 261
7	v 756
7, Note	v 756
8	iii 954
9 (**F B**)	v 692
10	vii 471
11	iii 1033
12 (**F B**)	ix 874
13	ix 517
13, Note	ix 517
14	ix 995
15	iii 1074
16	vii 266
17	ii 626
18	vi 866
19	vi 232
20	vii 223
21	ix 522
22	iii 1711
23	iii 345
24	i 1336
25	iii 1230
26	iii 985
27	vi 1164
28	v 360

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P.R. 1888—	
29 Civil	ii 2146
30	iii 1103
31	i 313
32	ii 148
33	ii 2337
34	ix 524
35	v 108
36	iii 1074
37	vi 1483
38	i 1880
39	iii 1731
40	iii 1166
41	v 383
42	i 1361
43	iii 845
44 (**F B**)	x 41
45	i 1779
46	iii 1085
47	v 456
48	vii 1947
49	iii 1715
50	iii 57
51	vi 1506
52	iii 1123
53	vii 1906
54	iii 595
55	v 456
56	ii 1440
57	vi 809
58	ii 1653
59	vi 725
60	iii 1729
61	ii 787
62	iii 963
63	vi 285
64	vii 1906
65	vii 1195
66	iii 430
67	iii 1164
68	iii 1046
69	v 111
70	vii 1852
71	i 309
72	iv 1579
73	i 1413
74	iii 57
75	iii 1144
76	iii 63
77	iii 951
78	iii 1012
79	iii 490
80	v 385
81	ix 574
82	iii 1104
83	vii 1907
84	i 7
85	iii 1014
86	iii 391

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P.R. 1888—	
87 Civil	ii 626
88	vii 283
89	iii 1152
90	iii 1231
91	ii 145
92	iii 1043
93	iv 1213
94	ii 1526
95	ii 1305
96	iii 342
97	ix 597
98	ix 600
99	ix 876
100	ix 514
101	viii 1665
102	vi 1251
103 (**F B**)	ix 1244
104	ii 1672
105	viii 1663
106	vii 916
107	iii 1232
108	iii 1163
109	iii 998
110 (**F B**)	x 32
111	iii 1054
*112	iv 2200
113	vi 1999
114	v 692
115	i 1374
116	ii 680
117	iii 1229
118	ix 592
119	i 1371
120	viii 743
121	vii 1809
122	viii 1808
123	vii 363
124	iii 63
125	ix 574
126	vii 1346
127	ii 2346
128	iii 1073
129	vi 1065
130	iii 1182
131	vii 643
132	ii 459
133	ii 1260
133, Note	ii 1260
134	ii 163
135	vi 616
136	iii 1086
137	ii 1848
138	iii 1988
139	viii 1165
140	i 278
141	v 692
142	iii 2006
143	iii 1182

* At Col. 2200, Vol. iv, read 112 P.R. 1888 for 132 P.R. 1888.

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P.R. 1888—	
144 Civil	iii 985
145	viii 1294
146	vi 1994
147	ii 2170
148	i 1329
149	iii 1137
150	iii 1179
151 (**F B**)	vi 978
152	iv 1213
153	vii 1907
154	iii 1402
155	ii 2257
156	iii 826
157	vi 266
158	i 1374
159	vii 1382
160	iii 455
161	vi 99
162	iv 1710
163	x 34
164	viii 385
165	vii 1947
166	iii 1114
167	iii 985
168	vi 1175
169	x 42
170	iii 1081
171	iii 1230
172	viii 404
173	ix 576
174	iii 1026
175	vii 27
176	iii 1081
177 (**P C**)	ii 1717
178	iii 952
179	vii 1947
180	iii 1174
181	i 151
182	ii 2197
183 (**F B**)	vi 100
184	ii 1049
185	iii 1006
186	vi 866
187	vii 515
188	ix 538
189	vi 2035
190	ii 780
191	iv 652
192	vii 1907
193	vi 640
1 Rev.	v 756
2	vii 1712
3	i 1324
4	v 361
5	viii 1814
6	v 847

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P.R. 1888—	
7 Rev.	ii 2325
8	v 847
9	i 1326
10	v 847
11	v 757
P.R. 1889—	
1 Civil	ii 1259
2	ii 2347
3	v 692
4	ix 518
5	ix 550
6	viii 1776
7	i 1880
8	iii 1145
9	ii 1116
10	iv 2200
11	iii 1179
12	iii 1160
13	iii 64
14	iv 248
15	iv 918
16	iii 1000
17	vii 1907
18	iii 1168
19	ii 1227
20	iii 460
21	vii 1852
22	iii 1142
23	ii 2137
24	ii 1348
25	v 692
26	i 1342
27, Note	ix 495
28	ix 555, x 203
29	ix 575
30	viii 400
31	iii 1171
32	ii 1718
33	iii 984
34	i 1787
35	iii 1121
36	iii 1147
37	iv 917, ix 597
38	ii 590
39	iii 1026
40	iii 64
41	iii 954
42	viii 1663
43	ii 2147
43, Note	ii 2147
44	iii 1161
45	iii 1037
46	ii 161
47	i 1343
48	iii 1159

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P.R. 1889—	
*49 Civil	vii 1907
50	iii 63
51	iii 1119
52	ix 499
53	iii 1064
54	vii 1852
55	vi 2031, viii 504
56	iii 1020
57	iii 1122
58	vi 2031
59	iii 983
60	iii 1156
61	ii 406
†62	iii 1146, ix 1195
63	ii 1139
64	iii 1032
65	vi 406
66	iv 688
67	vi 233
68	iii 1160
69	x 38
70	ii 785
71	iii 61
72	v 358
73	ii 1249
74	ii 2290
‡75	iii 1121
76	iii 1036
77	ii 1067
78	ii 1533
§79	iii 1033
80	ii 1776
81	viii 388
82	vii 1908
83	iii 1037
84	viii 1021
85	iii 1042
86	i 1371
87	viii 947
89	ii 2374
90	iii 1229
91	vii 340
92	viii 393
93	ii 1339
94	viii 1906
95	iii 969
96	viii 1768
97	iv 906
98	iii 1960
99	iii 1011
100	vii 28
101	iii 948
102	iv 1655
103	vii 1947
104	i 6
105	ii 2196

* At Col. 1907, Vol. vii, read 49 P.R. 1889 for 45 P.R. 1889. † At Col. 1195, Vol. ix, read 62 P.R. 1889 for 61 P.R. 1889. ‡ At Col, 1121, Vol. iii, read 75 P.R. 1889 for 75 P.R. 1899. § At Col. 1033, Vol. iii, read 79 P.R. 1889 for 79 P.R. 1899.

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P.R. 1889—	
106 Civil	vii 255
107	ii 1935
108	iii 59
109	ii 1227
110	v 692
111	viii 1773
112	iii 1051
113	ii 2298
114	iii 953
115	vii 1216
116	iii 1035
117	vi 2025
118	vii 1444
119	iii 62
120	v 123
121	iii 2049
122	i 74, vi 295, ix 487, x 449
123	viii 402
124	iv 873
125	i 1803
126	ii 2419
127	ii 394
128	iii 366
129 **(F B)**	ii 784
130	viii 1664
131	ii 2392
132	viii 393
133	ix 1899
134	vii 1978
135	v 208
136	viii 948
137	iii 1503
138	iii 1984
139	vi 569
140	v 385
141	iii 1042
142	iii 1636
143	ii 2163
144	ii 2278
145	vi 293
146	iii 1146
147	iii 1178
148	viii 331
150	ii 859
151	iii 62
152	iii 1027
153	iii 1179
154	vi 798
155	viii 1767
156 **(F B)**	iii 418
157 **(F B)**	viii 1342
158	viii 1568
159	ii 1228
160	vi 415
161	vii 416
162	iii 1261
163	vi 1993

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P.R. 1889—	
164 Civil	iii 910
165	ii 1659
166	ii 2227
167	ii 1065
168	iii 941
169	vii 1908
170	vii 1947
171	iii 1085
172	iii 1137
173	iii 1177
174	iii 1175
175	viii 947
176	iii 1180
177	iii 1140
178	iii 1121
179	iii 1181
180	iii 1178
181	iii 1128
182	iii 970
183 **(F B)**	viii 611
184	vi 99
185 **(F B)**	vii 265
186	ii 2238
187	iii 57
188	vi 1439
189	vii 1518
190	iv 2225
191	iii 61
192	iii 1005
193	iii 910
194	iii 1583
195	viii 714
196	x 425
197	iii 963
198	iii 1080, x 244
199	vii 1908
200	ii 1229
201	vii 448
202	iv 918
203	x 46
204	viii 403
205	ix 888
206	viii 1665
1 Rev.	v 848
2	i 1417
3	i 1324
4	v 848
P.R. 1890—	
1 Civil	iii 1032
2	vii 621
3	iii 1181
4	iii 1022
5	ii 2148
6	viii 1681
7	vi 265
8	v 259
9	i 6, ii 2417

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P.R. 1890—	
10 Civil	vi 905
11	iii 1080
12	ix 864
13	vii 1947
14	iii 988
15	x 323
16	iii 1118
17	ix 402
18	iii 1067
19	iii 1068
20	iii 1022
21	ix 1194
22	iii 1035
23 **(P C)**	vi 895, 907, 920
24	ix 566
25	iii 1035
27	ii 2392
28	i 1936
29	iii 62
30	iii 950
31	v 619
32	vi 2036
*33	vii 1948
34	viii 1685
35	ix 893
36	v 381
37	iii 57
38	iii 972
39	iii 954
40	iii 987
41	iii 987
42	iii 1074
43	iii 1043
44	iii 1005
45	iii 1180
46	iii 1189
47	iii 1177
48	iii 1130
49	iii 1102
50	x 21
51	viii 392
52	v 757
53	v 757
54	iii 1129
55	vii 366
56	iv 906
57	vi 1662
58	viii 604
59	viii 687
60	ii 1145
61	vii 1853
62	i 7
63	ii 2365
64	ii 1863
65	v 757
66	i 157
67	vi 2073
68	vii 1948

* At Col. 1948, Vol. vii, read 33 P.R. 1890 for 33 P.R. 180.

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P.R. 1890—	
69 Civil	iii 989
70 **(F B)**	vii 1852
71	ii 2337
72	ii 2402
73	iv 906
74 **(F B)**	vi 52
75 **(F B)**	viii 1662
76	ii 784
77	viii 662
78	vi 580
79	i 1364
80	iii 1103
81	ii 2197
82	iii 1025
83	iii 486
84	vii 265
85	v 123
86	iv 2362
87	vii 1948
88	iii 1021
89	iii 985
90	i 238
91	ix 1180, x 440
92	viii 676
93	iii 956
94	i 1364
95	iii 1071
96	vi 852
97	vi 958
98	iii 1142
99	ii 1227
100	ix 839
101	vi 101
102	vii 1853
103	v 1324, x 3
104	v 758
105	v 758
*106	i 1416, v 758
107	viii 1671
108	viii 1662
109	v 758
110	ix 596
111	i 1359
112 **(F B)**	vi 809
114	vi 852
115 **(F B)**	viii 158
116	vi 962
117	vii 1908
118	v 381
119	v 618
120	ii 2318
121	x 21
122	ii 1362
123	iii 1146
124	ix 1287
125	iii 1052

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126 Civil	iii 1042
127	ii 1626
128	iii 1064
129	iii 1184
130	vii 1289
131	iii 1988
132	iii 1043
133	ii 1260, iii 1043
134	ii 1658
135	i 1370
136	ii 2291
138	vi 569
139	ix 978
140	viii 1397
141	ii 459
142	vi 789
143	iv 314
144	v 1491
145	viii 1810
146	viii 1341
147 **(F B)**	vi 810
†148	iii 1157
149	vi 2041
150	v 620
151	ii 1224
152	iii 1102
153	viii 1141
154	vi 1154
155	ii 1343
156	iii 967
157	iii 1034
158	ii 1746
159	iii 957
160	viii 1813
161	x 161
162	v 758
163	iii 1175
1 Rev	i 1412
2	iii 1807
3	v 849
4	v 849
5	x 463
6	viii 1190
7	viii 1752
‡8	ii 2330
9	viii 1813
10	v 849
11	i 1417, v 757
12	iii 1806
13	i 1406
14	v 757
15	v 757
16	v 848
P.R. 1891—	
1 Civil	x 29

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P.R. 1891—	
2 Civil	ix 979
3	vi 1830
4 **(F B)**	iii 1118
5	vi 1367
7	iii 1087
8	iii 1069
9	ii 1228
10	ii 1057
11	vii 1341, 1379
12	iii 1180
13	i 269
14	vi 1367
15	iii 19
16	vi 294
17	iii 1132
18	ii 2238
19	v 758
20 **(F B)**	viii 1283
21	ix 979
22	iii 966, 1114
23	vii 325
24	iii 1087
25	iii 1231
26	iv 311
27	iii 1592
28	vii 223
29	ii 781
30	vi 1246
31	vi 603
32	iii 1179
33	iii 1065
34	iii 1086
35	iii 1156
36	iii 1065
37	viii 947
38	v 758
39	ii 1050
40	iii 959
41	viii 1261
42	iii 984, v 386
44 **(F B)**	v 759
45 **(F B)**	v 759
46	iii 1229
47	v 759
48	iii 1179
49	v 759
50	ix 845
51	viii 1205
52	vii 1853
53	iii 911
54	vi 905
55	x 326
56	iii 1140
57	vi 499
58	iii 1037
59	ix 1867

* At Col. 1416, Vol. i, read 106 P.R. 1890 for 106 P.R. 1890, Rev. † At Col. 1157, Vol. iii, read 148 P.R. 1890 for 146 P.R. 1890. ‡ At Col. 2330, Vol. ii, read 8 P.R. 1890. Rev. for 9 P. R. 1890, Rev.

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P.R. 1891—	
60 Civil	viii 1694
61	v 106
62	i 1362
63	i 1363
64	iii 911
65	ii 1402
66	iii 1172, vi 102, 1478
67	iv 156
68	v 759
69	ii 2291
70 (**P C**)	viii 1446
71	ii 1343
72	ii 394, vi 189
73	iii 1049
74	iv 2257
75	iii 987
76	iv 173
77	v 759
78	ii 2137
79	iii 1022
80	v 693
81	iii 959
82	vii 844
83	v 10, vi 1816, viii 567, 686
84	vi 728
85	i 1880
86 (**F B**)	iii 418
87	iii 941
88	vi 1369
89	ii 2365
90	iii 1084
91	v 128
92	iii 1065
93	iii 1146
94	iii 1078
95	iii 1042
97	iii 1146
98	iii 1055
99	iii 465
100	iii 1141
101	vii 491
102	iii 65
103	iii 1136
104	iii 967
105	iii 950
106	vi 1357
107	iii 1131
*108	iii 1061
109	iii 1048
110	iii 1122
111	iii 1140
112	viii 948
113	iii 1068
114	vii 1853
115	iii 1087
116	vi 285
117	ii 1719

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118 Civil	iii 1069
119	iii 1031
120	ii 2053
1 Rev.	vii 768
2	viii 1813
3	iii 1459
4	i 1406
5	viii 1812
6	iii 1514
7	v 848
8	v 849
9	viii 1730
10	v 849
12	i 1417
P.R. 1892—	
1 (**F B**) Civil	i 1359
2	iv 1641
3	ii 162
4	iii 946
5	ii 1572
6	ii 2364
7	i 2
8	iii 940
9	iii 1021
10	iii 1082
11	iii 19
12 (**F B**)	iii 1126
13 (**F B**)	ii 1229
14	iii 1076
15 (**F B**)	i 1359
16 (**F B**)	viii 604
17 (**F B**)	viii 1781
18	ii 147
19	ii 1451
20	i 1359
21	iii 966
22	iii 1078
23	iii 1145
24	iii 1073
25	iii 1075
26	vi 570, viii 1663
27	ii 1298
28	v 259
29	vii 1853
30	vi 730
31 (**F B**)	vi 888
32	iii 1048
33	iv 551
34 (**F B**)	viii 1907
35	iii 989
36	i 278
37	ii 2172
38	iii 1995
39	v 620
40	i 1364
41	v 693
42	iv 281

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43 Civil	vii 1908
44	iii 942
45	vi 716
46	i 1834
47	iii 909
48	ix 874
49	viii 947
50	iii 1163
51	vii 276
52	iii 1069
53	iii 990
54	iii 57
55	v 239
56 (**F B**)	x 30
57	ii 2424
58	iii 1180
59	ii 1704
60	ii 1325
61	iii 1015
63	vi 1397
64	iii 1167
65	iii 1064
66	ii 1364
67	i 1355
68	iii 1020
69	iii 954
70	v 693
71	iii 1174
72	iii 1015
73	v 257
74	iii 1064
75	iii 967
76	iii 1085
77	iii 1118
78	iv 906
80	iii 909
81	iii 954
82	iii 1038
83	iii 968
84	ix 538
85 (**F B**)	i 7
86	i 1933
87	viii 1882
88	v 620
89	iii 1035
90	iii 1006
91	vii 1854
92	vii 1948
93	iii 1054
94	vii 269
95	iii 1042
96	iii 1060
97	iii 1072
98	iii 968, 1041
99	iii 64
100	vii 1948
101	iii 1063
102	ii 1009

* At Col. 1061, Vol. iii, read 108 P. R. 1891 for 108 P.R. 191.

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P.R. 1892—	
103 Civil	vii 916
104	iii 985
105	viii 946
106	viii 946
107	iii 1061
108	vi 1300
109	vi 904
110	vi 888
111	v 242
112	iii 366
113	iii 1176
114	ii 2196
115	iii 1158
116	iii 1156
117	iii 1058
118	vii 1656
119	vii 268
120	iii 1041
121	vi 895
122	iii 1048
123	i 1880
124	viii 1345
125	ii 1751
126	vi 1057
127	vi 2038
128	iii 909
129	iii 990
130	viii 271
131	vii 1908
132	iii 830
133	iii 985
134	iii 1119
135	vi 498
136	ii 2321
137	iv 2143
138	iii 1086
139	iii 1170
140	iv 1641
141	vi 894
142	viii 1414
143	iii 1179
144	iii 952
145	i 1365
1 Rev	viii 904
2	v 360
3	x 462
4	i 1413, ii 2326
5	viii 1230, 1812
6	i 1406
7	ii 2326
8	v 846
9	v 846
10	v 846
11	v 846
12	v 846
13	v 846
14	v 360
15	iii 60

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16 Rev	viii 1675
17	viii 1675
18	iii 1103
19	ii 2325
P.R. 1893—	
1 (F B) Civil	ix 595
2	iii 1717
3	vi 28
4	iii 1121
5	iii 959
6	iv 1225
7	iii 1026
8	v 785
9	iii 951
10	iii 1018
11	vi 730
12	iii 955
13	i 1351
14	ii 2109
15	iii 576
16	iv 581
17	vii 1549
18	v 614
19	v 759
20	iii 790
21	iii 1039
22	iii 1171
23	iii 1087
24	ii 2197
25	vi 473
26	viii 1420
27	vii 1909
28	iii 1049
29	i 1368
30	vi 730
31	iii 1160
32	iii 1069
33	iii 1063
34	iii 1231
35	ii 784
36	vii 263
37	ii 1902
39	iv 950
40	i 1374
41	v 759
42	v 759
43	ii 1930
44	viii 300
45	vi 207
46	i 1359
47	ii 1260
48	ix 563
49	ii 163
50	iii 959
51	ii 160
52 (P C)	iii 1114
53	ii 680, v 760

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54 Civil	iv 379
55	v 760
56	iii 1131
57	iii 1207
58	i 1363
59	iv 1708
60	iii 410
61	iii 391
62	ii 799
63	v 760
64	iii 1182
65	viii 281
66	v 760
67	v 259
68	iii 1180
69	vii 1909
70	v 693
71	iii 1076
72	iii 1126
73	iii 1162
74	iii 1230
75	iii 1177
76	ii 1589
77	iii 1140
78	iii 910
79	iii 970
80	viii 384
81	iii 988
82	v 620
83	vii 1978
84	iii 1120
85	vii 1909
86	iii 375
87	vi 730
88	ii 680, iii 984
89	ii 635
90	iii 1087
*91	iv 707
92	ii 2109
93	iii 948
94	iii 948
95	viii 695
96	iii 952
97	ii 2137
98	iii 996
99	iii 1181
100	iii 1011
101	iii 1014
102	iii 966
103	v 260
104	vi 894
105	x 244
106	vii 1317
107	iii 1058
108	iii 1086
109	iii 850
110	iii 988
111	iii 1128

* At Col. 707, Vol. iv, read 91 P.R. 1893 for 21 P.R. 1893.

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113	iii 958
114	iii 1136
115	iii 1146
116	iii 1044
117	iii 996
118	i 7
119	iii 1120
120	iii 989
121	iii 1085
122	iii 1023
123	v 693
124	ii 2216
125	iii 1039
126	viii 293
127	i 1347
128	iii 1138
129	iii 1046
130	iii 1011
131	iii 1054
132	i 1369
133	iii 1138
134	iii 1169
135	iv 929
136	iii 455
137	iv 945
138	iii 1169
139	ii 1959
140	iii 1064
141	iii 1183
142	iii 948
143	iii 1230
144	iii 1230
145	iii 1230
1 Rev.	i 1394
2	ii 2402
3	viii 1752
4	i 1417
5	iii 1853
6	iii 1025
P.R. 1894—	
1 Civil	viii 385
2	ii 2311
3	iii 961
4	i 237
5	viii 365
6	vi 169
7	ii 2420
8	ii 919
9	viii 1681
10	iii 62
11	iii 1051
12	ii 222
13	iii 950
14	v 693
15	iii 1058
16	viii 1670
17	iii 1061
18	iii 1163

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19 Civil	iii 327
20	i 1361
21	v 581
22	v 693
23	ii 1589
24	iii 1006
25	ii 1311
26	ii 942
27	ii 1229
28	i 1411
29	v 386
30	iii 961
31	iv 1294
32	iii 2045
33	v 694
34	iii 959
35	iii 910
36	v 207
37	vi 731
38	vii 338
39	iii 966
40	viii 1799
41	v 694
42	ii 2337
43	v 123
44	vii 1153
45	i 1365
46 (**F B**)	v 615
47	iii 1036
48	iii 968
49	ix 306
50	iii 1048
52	v 1328
53	ii 680
54	ii 943
55	x 347
56	vi 931
57	v 760
58	ii 1262
59	iii 1132
60	viii 1416
61	iii 1128
62	ii 1997
63	v 615
64	iii 1064
65	viii 1783
66	ii 2149
67	ii 1349
68	iii 1077
69	ii 879
70	iii 985
71	iii 1032
72	ix 1230
73	iii 952
74 (**F B**)	ii 141
75	iv 1502
76	vii 1909
77	viii 1377
78	v 397
79	ii 859

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P.R. 1894—	
80 Civil	i 1372
81	iii 1048
82	v 760
83	iv 1535
84	iv 929
85	i 127
86	iii 961
87 (**F B**)	i 1351
88	v 760
89	iv 516
90	iii 1147
91	iii 1076
92	iii 965
93	iii 1061
94	ii 163
95	viii 637
96	v 760
97	viii 361
98	iii 327
99	iii 460
100	ii 1253
101	vii 222
102	v 386
103	iv 1919
104	v 761
105	v 761
106	vi 1051
107	iii 1072
108	viii 365
109	viii 1799
110	iii 1064
111	ii 859
112	iv 652
113	vii 1290
114	v 261
115	ii 614
116	iii 1076
117	ii 701
118	v 761
119	ix 517
120	viii 605
121	v 260
122	iii 968
123	vii 265
124	vi 312
125	ii 2131
126	iii 1058
127	iii 1025
128	ii 1229
129	iii 966
130	ii 2257
131	vii 224
132	x 14
133	vii 266
134	iii 1170
135	iii 1064
136	viii 605
137	vii 1854
138	iii 945
139	iii 2016

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141	iii 1124
142	ii 1945
143	iii 951
144	i 310
145	iii 984
146	iii 1157
1 Rev	vi 2073
2	v 848
3	v 848
4	ii 1260
*5	v 848
6	v 848
P.R. 1895—	
1 Civil	iii 504
2	iii 984
3	v 761
4	vii 916
5	iii 1061
6	vi 1075
7	vi 34
8	ii 2299
9	iii 1146
10	vii 1854
11 (F B)	v 761
12	vii 221
13	ix 526
14	iii 1074
15	iii 1073
16 (F B)	viii 605
17	vii 1948
18 (F B)	vi 961
19	iii 960
20	iii 1133
21	iii 850
22	iii 1118
23	v 694
24	vii 256
25	iii 1162
26	v 761
27 (F B)	i 1371
28	vii 730
29	iii 1133
30	v 762
31	iii 1169
32 (F B)	iv 1294
33	vi 169
34	iv 984
35	iii 1715
36	iii 64, 1055
37	ii 2238
39	iii 1159
40	ii 1077
41	iii 1178
42	ii 787
43	viii 1800

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P.R. 1895—	
44 (F B) Civil	v 620
45	vi 403
46	iii 1178
47	iii 960
48	ii 2197
49	iii 2035
50	iv 1294
51 (F B)	v 1326
52	vi 629
53	iii 1131
54 (F B)	i 1393
55	iii 1034
56	iii 785, x 27
57	viii 1204
58	iii 956
59	iii 1069
60	iii 1137
61	iii 2045
62	ii 2424
63	iii 1034
64	viii 393
65	ii 1331
66	iii 434
67	vii 1854
68	ii 1246
69	ii 1170, 1254
70	viii 614
71	iii 971
72	iii 1087
73	iii 984
74	vi 888
75	vii 325
76	vi 403
77	ii 1517
78	ii 1821
79	iii 1086
80	iii 402
81	iii 1065
82	ii 1762
83	iii 1086
84	iii 961
85 (F B)	ii 2365
86	ii 2275
87	vii 1910
88	iii 1072
89	v 762
90 (F B)	vi 967
91	iii 833
92	iii 1051
93	iii 1061
94	vii 1910
95	iii 1073
96	ii 787
97	viii 611
98	iii 965
99	iii 2048
101	iii 1049

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P R. 1895—	
102 Civil	ix 973
†103	iii 957
104	iii 781
105	vii 1117
106 (F B)	i 1933
107	ii 2290
108	vii 1909
1 Rev	viii 1813
2	i 1422
3	v 361
4	i 1393
5	iii 941
6	i 1390
7	i 1418
8	viii 1769
9	vii 1118
10	ii 2329
11	vii 1120
P.R. 1896—	
1 (F B) Civil	x 30
2	iii 1103
3	i 1369
4	iii 1104
5	ii 786
6	vi 893
7	v 1203
8 (F B)	ii 2196
9	v 694
10	viii 604
11	iii 1132
12	ii 1440
13	ii 2251
14	ix 1888
15	iii 984
16	iii 1048
17	vii 1948
18	iii 1157
19	ix 847
20	viii 1799
21	iii 1075
22 (F B)	viii 1800
23	iii 1052
24	vii 1216
25	iii 949
26	vi 772
27	iii 1160
28	ii 1504
29	iii 578
30	iii 1161
31 (F B)	viii 1784
32	ii 1526
33	iii 1103
34	vii 337
35	iii 966
‡36	i 1832
37	ii 2216

* At Col. 848, Vol. v, read 5 P.R. 1894, Rev. for 5 P.R. Rev. † At Col. 957, Vol. iii, read 103 P.R. 1895 for 63 P.R. 1895. ‡ At Col. 1832, Vol. i, read 36 P.R. 1896 for 6 P.R. 1896.

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38 Civil	iii 960
39	iv 1284
40	iii 1038
41	ii 1821
42	ii 2104
43	i 1836
44	iii 1163
45	ii 2364
46	iii 1175
47	iii 1162
48	vii 1362
49	ii 1159
50	ix 1300
51	iii 1177
52	iii 940
53	ii 2149, iii 414
54	ii 1461
55	viii 1378
56	vi 1246
57	iii 1054
58	iii 1005
59	ii 1429
60	ii 142
61	iii 728
62	i 1933
*63	viii 1353
64	ii 2262
65	iv 949
66	iii 218
67	vii 366
68	iii 1180
69	iii 1020
70	iii 1042
71	viii 362
72 (F B)	v 620
73	iii 1157
74	ix 508
75	vi 628
76	iii 339
77	iii 1182
78	ii 1902
79	iii 1070
80	viii 387
81	iii 1020
82	ii 1145
83	v 694
84	vi 1598
85	iii 1673
86	i 1373
87	vii 1910
100	vii 1909
1 Rev	v 846
2	v 846
3	i 1406
4	viii 1752
5	viii 1742
6	vii 1110

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P.R. 1896—	
7 Rev	v 846
8	v 360
9	viii 1746
10	iii 1186
11	vii 1128
P.R. 1897—	
1 Civil	vi 303
2	iii 1043
3	ii 2083
4	i 2149
5	vi 998
6	i 435
7	ii 785
8	viii 1673
9	vi 278
10	vi 2000
11	vii 1204
12	ii 1527
13	iv 936
14	iii 1103
15	ii 1731
16	ii 785
17	ii 785
18	ix 1296
19	iii 1058
20	iv 1488
21	viii 90
22	ii 140, iii 482
23	iii 941
24	iii 960
25	ii 2347
26	vi 189
27	vii 1910
28	v 260
29	ii 1371
30	vii 1911
31	ii 2347
32	v 1327
33	vi 349
34	viii 1663
35	iii 1169
36	vii 1911
37	i 1356, vi 654
38	viii 1436
39	iii 965
40	iii 1181
41	ix 637
42	iii 1579
43	vi 2039
44	iii 1081
45	vii 1911
46	iii 1121
47	ii 1259
48	viii 388
49	iii 939
50	iii 1146

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51 Civil	iii 848
52	ii 326
53	iii 1049
54	iii 1171
55	iii 952
56	i 433
57	ii 1928
58	ii 1066
59	ii 1261
60	ii 984
60 (F B)	ii 1751
61 (F B)	v 621
62	ii 1061
63	iv 206
64	v 762
65	vi 1034
66	iii 1037
67	ii 2232
68	i 1372
69	vi 110
70	ii 1112, 1167, 2216
71	iii 430
72	vii 1911
73	iii 1205
74	vii 1949
75	iii 989
†76	viii 1372
1 Rev	v 361
2	v 361
3	iii 1033
4	viii 1768
5	v 1182
6	iii 996
7	iii 1810
P.R. 1898—	
1 Civil	iii 966
2	iii 369
3	iii 1157, viii 1779
4	i 1425
5	iii 1161
6	vii 1487
7	iv 925
8	ii 1747
9 (F B)	iii 1186
10	iv 937
11	i 237
12	iv 730
13	iii 1205
14	i 1402
15	ii 1425
16	ii 1938
17 (F B)	iii 423
18	vii 366
19	v 386
20	ii 2137
21 (F B)	ii 163

* At Col. 1353, Vol. viii, read 63 P.R. 1896 for 6 P.R. 1896.

† At Col. 1372, Vol. viii, read 76 P.R. 1897 for 16 P.R. 1897.

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22 Civil	viii 1799
23	viii 1709
24	iii 1085
25	iii 956
26	vi 1999
27	x 261
28	ii 1157
29	iii 1027
30	vii 1128
31	viii 1373
32	vi 1250
33	v 1200
34	vi 228
35	viii 1436
36	i 1801
37	iii 1162
38	ii 1157
39	iii 1033
40	ii 1227
41	i 1365, ii 594
42	ix 886
43	ii 1780
44	viii 678
45	i 319
46	i 1387
47	vi 1212
48	i 1387
49	iii 1078
50	ii 2137
51	viii 605
52	i 1423
53	vii 1188
54	iv 926
55	iv 2362
56	ii 2364
57	iii 1013
58	ii 1776
59	ii 1251
60	vii 844
61	iii 1033
62	iii 1711
63	iii 378
64	v 974
65	vii 1911
66	i 1365, 1366, ii 638
67	iii 1058
68	iii 1125
69	vii 1911
70	vii 1949
71	vii 132
72	iv 1373
73	vii 1912
74	iii 1120
75	iii 1013
76	iv 1294
77	vii 240
78	iii 1138
79	vi 891
80	viii 388
81	iii 1893

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82 (F B) Civil	vii 1133
83	ii 1959
84	iii 1013
85	iv 248
86	i 1836
87	iii 1207
88	vii 1854
89	iii 990
90	i 1426
91	ii 777
92	iv 242
93	iv 1538
94	iii 967
95	iii 910
96	v 1203
97	iii 955
98	vi 1558
99	v 385
100	viii 1367
1 Rev.	iii 1025
2	iii 1025
4	vii 1115
P.R. 1899—	
1 Civil	iii 378
2	ii 1009
3	viii 947
4	viii 1341
5	viii 1685
6	x 338
7	iii 1103
8	vi 754
9	iii 1043
10	ii 1710
11	iii 1008
12	iii 1121
13	ix 843
14	iii 983
15	ii 163
16	i 342
17	ii 2238
19	ii 2251
20	vii 1912
21	ii 1516
22	iii 1085
23	ii 2364
24	vi 2041
25	vi 731
26	viii 1685
27	ix 904
29	ix 1283
30	ii 2080
31	viii 302
32	vi 1242
33	vii 380
34	iii 957
35	vi 852
36	vii 1912
37	x 232
38	iii 390

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39 Civil	v 208
40	iii 1231
41	viii 1342
42	ii 2469
43	iii 1036
44	viii 1669
45	iv 206
46	iii 1010
47	vi 100
48	iii 990
49	iii 990
50	viii 1341
51	viii 1685
52	iii 1207
53	iii 996
54	iii 1142
55	vii 1906
56	iii 1163
57	ix 915, 916
58	iii 1026
59	ii 1436
60	iii 510, viii 73
61	vi 1463, 1504
62	iii 1764
63	iii 505
64	iii 1087
65	ii 174
66	vi 1328
67	vii 70, 687
68	iii 1728, vii 1460
69	ii 1070, ix 1509
70	vii 1949
71	iv 1682
72	iii 794
73	vii 340
74	iii 1037, 1175
75	vii 1978
76	v 108, viii 1198
77	iii 1583, x 130
78	ii 163
79	ii 785
80	ii 1805
1 Rev.	iii 61
2	v 847
3	i 1395
P.R. 1900—	
1 Civil	iii 1386
2	i 1363
3	iii 1586, vii 196
4	iii 995, iv 1293
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6	iii 1063
7	iii 990, 993
8	ii 1264
9	ii 2325
10	viii 673
11	iii 1103
12	i 1366

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13 Civil	i 1800
14	vii 1384
15	iii 366
16	ii 493
17	vii 1233
18	iii 1181
19	v 125
20	ii 781, ix 901
21	vii 1949
22	iii 1027, vii 673
23	vii 230
24	iii 963
25	v 694
26	iii 822
27	vii 448, viii 1435
28	viii 949
29	iii 1181
30	ii 1740
*31 (F B)	vii 95, 688
32	vii 223, 663
33	iii 956
34	iii 1180
35	ii 1260
36	ii 1780
37	viii 613
38	iii 827
39	viii 1296, 1388
†40	ii 1189
41	iii 1011
42	i 1371
43	vi 411
44	vii 1913
45 (F B)	vi 2027
46	iii 1070
47	iii 1113
48	iv 333, vi 1225
49	iii 1707
50	iii 1205
51	iii 1205
52	i 1427
53	vi 888
54	iii 1203, 1205
55	v 694
56	viii 699
57	ii 1060
58	vii 1949
59	ii 1526, iii 1453
60	viii 384
61	ii 1449
62	vi 263
63	viii 267, x 330
64	i 249
65	iii 1009
66	v 9
67	iii 1034
68	ii 625
69	iii 990

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70 Civil	viii 1416, 1499
71	ii 680, vii 351
72	iii 1078
73	iii 2000
74	v 52, vi 1486
75	i 316, v 1369
76	iii 1711
77	vii 1186
78	v 694
79	iv 1214
80	vi 1380
81	iii 957
82	iii 1045
83	iii 1052
84	iii 1020
85	iii 1045
86	iii 1162
87	iii 1118
88	iii 1230
89	vii 1949
90	iii 498
91	iii 239
92	vii 1978
93	ii 1062, ix 562
94	viii 387, 398
95	i 210
96	ii 1830
97	iv 311
98	ii 182
99	vii 1950
100	vii 1913
101	x 13
102	viii 627, 687
103	iii 1164
104	v 621
105	iv 1267
106	v 763
107	vii 1950
108	iii 1158
109	vii 1913
110	ii 137
111	ii 2002
112	iii 1188
113	iii 60, viii 1157
114	x 271
115	iii 1231
116	vi 954
1 Rev.	x 463
2	iii 1033
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4	iii 1033
5	i 1397
6	viii 1768
P.R. 1901—	
1 Civil	ii 1058
2	i 1396, iii 1021

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4	i 1394, ii 1741
5	v 843, viii 793
6	v 1526, ix 1586
7	iii 541
8	iv 2356, v 868
9	ii 998
10	i 1393, vi 939
11	iii 1220
12	iii 1049
13	ii 1834, v 763
14	iii 1077
14 Cr.	vi 1666
15	i 1375
16	iii 1212
17	iii 97
18	ii 2229
19	viii 372
20	ix 1262
21	viii 792
22	i 1353, 1357, 1398
23	ii 2341
23 Cr.	ix 333
24	vii 1914
25	iii 997
26	iii 1081
27	i 1428
28	viii 793
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* At Col, 688, Vol. vii, read 31 P.R. 1900, F.B. for 30 P.R. 1900.
† At Col. 1189, Vol. ii, read 40 P.R. 1900 for 48 P.R. 1900.

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97	iii 1240
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* At Col. 1354, Vol. i, read 75 P.R. 1901 for 175 P.R. 1901.
† At Col. 768, Vol. vii, read 14 P.R. 1901, Rev. for 14 P.R. 1901.

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57	vii 1346
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* At Col. 1722, Vol. ii, read 8 P.R. 1902, Rev. for 8 P.R. 1902.
† At Col. 266, Vol. viii, read 84 P.R. 1903, P.C. for 184 P.R. 1903.

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* At Col. 1951, Vol. vii, read 87 P.R. 1906 for 87 P.R. 1900.
† At Col. 2379, Vol. ii, omit 119 P.W.R. 1908.

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* At Col. 1011, Vol. iii, read 78 P.R. 1908 for 178 P.R. 1908. † At Col. 1438, Vol. i, read 117 P.R. 1908 for 167 P.R. 1908. ‡ At Col. 929, Vol. iv, read 43 P.R. 1909 for 46 P.R. 1909.

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* At Col. 428, Vol, vi, read 28 P.R. 1910 for 23 P.R. 1910.
† At Col. 1145, Vol. v, read 94 P.R. 1910 for 94 P.W.R. 1910.

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* *N.B.*—The citation of cases from the Punjab Record, Punjab Law Reporter and the Punjab Weekly Reporter are by the No. of cases and not by pages. Hence the figures under each year's Punjab Law Reporter denote the No. of cases and not the page of the Report.

† At Col. 330, Vol. x, read P.L.R. 1900, p. 251 for P.L.R. 1901, p. 251.

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* At Col. 845, Vol. ix, read P.L.R. 1900, p. 451 for P.L.R 900, p. 451.
† At Col. 1423, Vol. i, read 2 P.L.R. 1901 for 2 P.L.R. 1911.

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* At Col. 1467, Vol. vi, read 105 P.L.R. 1902 for 105 P.L.R. 1912.

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* At Col. 94, Vol. vi, read 91 P.L.R. 1903 for 19 P,L,R. 1903. † At Col. 1931, Vol. ix, read 125 P.L.R. 1903 for 25 P.L.R. 1903. ‡ At Col. 706, Vol. vi, read 13 P.L.R. 1904 for 13 P.L.R. 1905.

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* At Col. 2094, Vol. ii, read 21 P.L.R. 1908 for 21 P.W.R. 1908. † At Col. 2379, Vol. ii, omit 119 P.W.R., 1908. ‡ At Col. 238, Vol. viii, omit 106 P. R. 1907.

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*At Col. 1115, Vol. iii, read 154 P.L.R. 1908 for 177 P.L.R. 1908. † At Col. 248, Vol. x, read 16 P.L.R. 1909 for 16 P.L.R. 1908.

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* At Col. 1127, Vol. iii, read 15 P.L.R. 1910 for 15 P.W.R. 1910. † At Col. 2117, Vol. ii, read 64 P.L.R. 1910 for 64 L.R. 1910. ‡ At Ool. 1006, Vol. iii, read 115 P.L.R. 1910 for 112 P.L.R. 1910.

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* At Col. 649, Vol. iv, read 202 P.L.R. 1910 for 20 P.L.R. 1910.

† At Col. 854, Vol. v, read 219 P.L.R. 1911 for 21 P.L.R. 1911.

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1 *N.B.*—The citation of cases from the Punjab Record, Punjab Law Reporter and the Punjab Weekly Reporter are by the No. of cases and not by pages. Hence the figures under each year's Punjab Weekly Reporter denote the No. of cases and not the page of the Report.

* At Col. 1015, Vol. ix, read 75 P.L.R. 1912 for 15 P.L.R. 1912. † At Col. 1695, Vol. viii, read 176 P.L.R. 1912 for 146 P.L.R. 1912. ‡ At Col. 888, Vol. vi, read 208 P.L.R. 1912 for 208 L.R. 1912. § At Col. 491, Vol. vi, read 2 P.L.R. 1913 for 1 P.L.R. 1913.

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* At Col. 2094, Vol. ii, read 104 P.W.R. 1907 for 104 P.L.R. 1907.

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* At Col. 1285, Vol. ix, read 184 P.W.R. 1908 for 156 P.W.R. 1908. † At Col. 1122, Vol. iii, read 11 P.W.R. 1909 for 111 P.W.R. 1909.

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* At Col. 378, Vol. vi, read 103 P.W.R. 1909 for 102 P.W.R. 1909. † At Col. 1596, Vol. ii, read 36 P.W.R. 1910 for 36 P.W.R. 10.

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* At Col. 254, Vol. iii, read 114 P.W.R. 1910 for 14 P.W.R. 1910. † At Col. 1152, Vol. iii, read 141 P.W.R. 1910 for 141 P.W.R. 1890. ‡ At Col. 1779, Vol. ii, omit 5 Ind. Cas. 842. § At Col. 2056, Vol. vi, read 120 P.W.R. 1911 for 126 P.W.R. 1911. ‖ At Col. 1775, Vol. iv, read 129 P.W.R. 1911 for 129 W.R. 1910.

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* At Col. 233, Vol. vi, read 208 P.W.R. 1912 for 20 P.W.R. 1912.
† At Col. 1940, Vol. vii, read 255 P.W.R. 1912 for 225 P.W.R. 1912.

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* At Col. 1547, Vol. vii, read 2 Sar. 402 for 2 Sar. 405. † At Col. 769, Vol. viii, read 2 Sar. 459 for 2 Sar.469. ‡ At Col. 1629, Vol. iv, read 2 Sar. 467 for 2 Sar. 523. § At Col. 1907, Vol. ix, read 2 Sar. 530 for 2 Sar. 297. ‖ At Col. 196, Vol. viii, read 2 Sar. 616 for 2 Sar. 379. ¶ At Col. 2260, Vol. iv, read 3 Sar. 82 for 3 Sar. 85.

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* At Col. 159, Vol. iv, read 3 Sar. 344 for 3 Sar. 341. † At Col. 1879, Vol. iv, read 3 Sar. 602 for 3 A. 602. ‡ At Col. 365, Vol. ix, read 3 Sar. 654 for 3 Sar. 674. § At Col. 1536, Vol. iv, read 3 Sar. 724 for 3. ‖ At Col. 2134, Vol. iv, read 3 Sar. 753 for 3 Sar. 373.
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* At Col. 470, Vol. iv, read 4 Sar. 406 for 4 Sar. 407. † At Col. 255, Vol. ix, read 4 Sar. 573 for 4 Sar. 572. ‡ At Col. 2008, Vol. iv, read 4 Sar. 726 for 4 Sar. 72.

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* At Col. 784, Vol. vi, read 5 Sar, 255 for 5 Sar. 254. † At Col. 1032, Vol. vii, read 6 Sar. 150 for *b* Sar. 150.

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* At Col. 476, Vol. x, read 8 Sar. 1 for 18 Sar. 1. † At Col. 77, Vol. iv, read 8 Sar. 583 for 5 Sar. 583.

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* At Col. 152, Vol. x, read 1 Suth. 483 for 1 Suth. P.C.J. 480. † At Col. 293, Vol. vii, read 1 Suth. P.C. 635 for Suth. P.C. 635. ‡ At Col. 220, Vol. viii, read 2 Suth. 257 for 2 Suther 251.

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* At Col. 940, Vol. iv, read U. B. R. 1892-1896, Vol. ii, 408 for U. B. R. 1892-1896, Vol. ii, 418.

† At Col. 1657, Vol. ii, read U. B. R. 1897-1901, Vol. ii, 240 for U. B. R. 1897-1901, Vol. ii, 40.

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* At Col. 1460, Vol. ix, it is wrongly printed as U.B.R. 1905, Tort (defamation). † At Col. 476, Vol. iii, read U.B.R. 1909 2nd qr. Contract 17 for Contract 74. ‡ At Col. 1045, Vol. ix, read 1 W.R. 41 for 1 W.R. 47.

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* At Col. 1387, Vol. ix, read 1 W.R. 344 for 7 W.R. 344.

† At Col. 815, Vol. ii, read 1 W.R. Mis. 31 for 1 W.R. Mis. 3.

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* At Col. 1860, Vol. vii, read 2 W.R. 215 for 2 W. R. 315. † At Col. 672, Vol. v, read 2 W.R. Act x. Rul. 4 for 2 W. R. x Rul. 4. ‡ At Col. 2002, Vol. iii, read 2 W.R. Act x, 57 for 2 W. R. Act x Rul. 571.

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* At Col. 814, Vol. ii, read 3 W.R. Mis. 6 for 5 W.R. Mis. 6.

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* At Col. 1575, Vol. viii, read 5 W.R. 59 for 5 W R 69. † At Col. 952, Vol. viii, read 5 W 11 for 5 W.R. 511.

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*At Col. 1909, Vol. iii, read 7 W.R. 2, for 7 W.R. 3. † At Col. 1470, Vol. iv, read 7 W.R. 5, for 7 W.R. 6.

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* At Col. 1667, Vol. iii & Col. 1644, Vol. vii, read 7 W.R. 531 for 7 W.R. 530. † At Col. 825, Vol. ii, read 8 W.R. 12 for 8 W.R. 21.

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* At Col. 1554, Vol. viii, read 11 W.R. 491 for 14 W.R. 491. † At Col. 1803, Vol. iv, read 11 W.R. 33, P C for 12 W R, 33 P C.

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* At Col. 1927, Vol. ix. read 12 W.R. 319 for 12 M.R. 319. † At Col. 1601, Vol. viii. read 12 W.R. 461 for 12 W.R. 411. ‡ At Col. 1362, Vol. v. read 12 W.R. 465 for 12 W.R. 265. § At Col. 1172, Vol. v, read 12 W.R. 495 for 12 W.R. 496. ‖At Col. 883, Vol. vi, read 12 W.R. F.B. 14 for 12 W.R. 14. $ At Col. 1904, Vol. iii. read 12 W.R. F.B. 27 for 12 W.R. 27.

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* At Col. 162, Vol. ix, read 13 W.R. 273 for 18 W.R. 273. † At Col. 848, Vol. iv, read 13 W.R. 275 for 3 W.R. 275. ‡ At Vol. 1655. Vol. ii, read 13 W. R. 344 for 13 W.R. 345. § At Col. 853, Vol. ii, read 13 W.R. 426 for 13 W.R. 427. ‖ At Col. 1332, Vol. ix, read 14 W.R. 9 for 14 W.R 19.

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* At Col. 1316, Vol. viii, read 14 W.R. 301 for 4 W.R. 301. † At Col. 970, Vol. viii, read 14 W.R. 401 for 11 W.R. 401. ‡ At Col. 65, Vol. iv, read 14 W.R. 493 for 11 W.R. 493.

§ At Col. 747, Vol. ix, read 14 W.R. F.B. 30 for 14 W.R. 30. ‖ At Col. 2125, Vol. iv, read 14 W.R.O.C. 23 for 14 W.R. 23. ¶ At Col. 1734, Vol. i, read 14 W.R. P.C. 28 for 14 W.R. P.C. 29.

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* At Col. 1036, Vol. ix, read 15 W.R. 237 for 115 W.R. 237.

† At Col. 1988, Vol. vi, read 15 W. R. 268 for 13 W. R. 268.

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* At Col. 617, Vol. ii, read 15 W.R. 507 for 5 W.R. 507. †At Col. 717, Vol. iii, read 15 W.R. P.C. 41 for 15 W.R. 41.

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* At Col. 2303, Vol. ii, read 16 W.R. 271 for 16 W.R. 71. † At Col. 1782, Vol. vi, read 16 W.R. 273 for 16 W.R. 275. ‡ At Col. 1969, Vol. viii, read 16 W R 277 for 15 W.R. 277. § At Col. 1591, Vol. ii, read 16 W.R. P.C. 5 for 16 W. R. 5. ‖ At Col. 783, Vol. ix, read 16 W. R. P C 26 for 16 W.R.P.C. 2.

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* At Col. 62, Vol. ix, read 17 W. R. 352 for 7 W. R. 352.

† At Col. 705, Vol. iii, read 17 W. R. 358 for 7 W. R. 358.

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* At Col. 2036, Vol. iii, read 17 W.R. 421 for 17 W.R. 122.

† At Col. 1551, Vol. iii, read 17 W.R.P.C. 459 for 17 W. R. 159, P. C.

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* At Cols. 1434, 1886, Vol. iv at Col. 348, Vol. v, and at Col. 880, Vol. viii, read 21 W. R. 358 for 21 W. R. 38 and at Col. 880, Vol. viii, read 1 I. A. 268, 282 for 6 I. A. 268, 282.

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* At Col. 1521, Vol, iv, read 22 W R 54 for 24 W R 54.

† At Col. 1845, Vol. iii, read 22 W R 335 for 22 W R 330.

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* At Col. 249, Vol. viii, read 24 W.R. 206 for 24 W.R. 201. † At Col. 1617, Vol. vii, read 24 W R 376 for 24 W R 306. ‡ At Col. 905, Vol. v, read 24 W R 404 for R 404.

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* At Col. 1003, Vol. vii, read 25 W R 118 for 25 W R 188.

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* At Cols. 861, 1952, 820, 937, Vols, ii, iii, iv, v, read 25 W R 239 for 25 W R 339.

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* At Col. 382, Vol. vii, read W R 1864, 75 for W R 1864, 725. † At Col. 156, Vol. viii, read W R 1864, 118 for W R 1864, 119. ‡ At Col. 88, Vol. iv, read W R 1864, 135 for W R 1864, 136.

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* At Col. 1948, Vol. i, read W R 1864, 294 for W R 1864, 295.

† At Col. 1954, Vol. vi, read W R 1864, 362 for W R 1884, 362.

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* At Col. 1403, Vol. i, Rev. is omitted in 6 P R 1902.

† At Col. 1471, Vol. vi, read 10 Bom L R 717 for 19 Bom L R 717.

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† At Col. 708, Vol. viii, read 3 C L R 434 for 3 C.L.R. 436.
‡ At Col. 1573, Vol viii, read 9 for 6 Ind Cas 320.

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* At Col. 287, Vol. vii, read 20 A. 358 for 20A. 353.

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* At Col. 2188, Vol. ii, 4 M. L. J. 263 is wrongly printed as equal to 19 M. 419.

† At Col. 784, Vol. vi, read 5 Sar. 255 for 5 Sar. 254

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*At Col. 49, Vol. vi, read 21 M. 385 for 11 M. 385.

† At Col. 1722, Vol. i, read 5 Ind. Cas. 633 for 5 Ind. Cas. 63.

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*At Col. 335, Vol. ii, it is wrongly printed that 8 M.L.J. 287=22 M. 22.

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* At Col. 533, Vol. viii, read 5 L.B.R. 1884 for 6 B.L.R. 184.

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† At Col. 707, Vol. iv, read 91 P R 1893 for 21 P R 1893.

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† At Col. 475, Vol. v, read 5 C 489 for 5 C. 477.

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† At Col. 716, Vol. i, read 3 A LJ 698 for 3 A.L.J. 689.
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* At Col. 366, Vol. x, read Cor 78 for Cor 73.

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* At Col. 1961, Vol. vii, read A W N 1903, 83 for A W N 1903, 82.
† At Col 248, Vol. x, read 16 P L R 1909 for 16 P L R 1908.
‡ At Col. 505, Vol. ii, read 31 C 11 for 31 C 111 and at Col. 266, Vol. viii, read 84 P R 1903 for 184 P R 1903.

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* At Col. 282, Vol. viii, read 13 C L J 47 for 13 C L J 46.
† At Col. 1280, Vol. ii, read 6 C W N lxvii for 6 C W N 67.

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* At Col. 706, Vol. vi, read 13 P L R 1904 for 13 P L R 1905.
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* At Col. 649, Vol. iv, read 202 P L R 1910 for 20 P L R 1910.
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† At Col. 855, Vol. ix, read 19 B 764 for 9 B 764.

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† At Col. 688, Vol. vii, read 31 P R 1900 for 30 P R 1900.
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† At Col. 2284, Vol. iv, read 4 Bom L R 508 for 4 Bom L R 509.

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† At Col. 1779, Vol. ii, read 6 Ind Cas 623 for 5 Ind Cas 842.

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† At Col. 633, Vol. iv, read 13 C W N 846 for 13 C W N 845.

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* At Col. 613, Vol. iv, read 8 C W N 135 for 7 C W N 135.
† At Col. 42, Vol. vii, read 10 C L J 150 for 10 C L J 130.

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* At Col. 714, Vol. ii, read 4 Bom L R 167 for 4 Bom L R 187 and at Col. 62, Vol. iv, read 6 C W N 386 for 6 C W N 586.

† At Col. 78, Vol. viii, read 4 Sar 112 for 4 Sar 117.

‡ At Col. 78, Vol. viii, read 4 Sar 112 for 4 Sar 117.

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† At Col. 1521, Vol. iv, read 22 W R 54 for 24 W R 54.

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† At Col. 783, Vol. ix, read 16 W.R.P.C. 26 for 16 W.R.P.C. 2.

‡ At Col. 1536, Vol. iii, read A.W.N. 1892, 154 for A.W.N. 1892, 164 and at Col. 1505, Vol. ix, read A.W.N. 1892, 154 for A.W.N. 1892, 164.

§ At Col. 180, Vol. viii, read 12 C W N 214 for 22 C.W.N. 214.

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* At Col. 427, Vol. iii, read A W N 1906, 135 for A W N 1906, 125.
† At Col. 1152, Vol. iii, read 141 P W R 1910 for 141 P W R 1890.
‡ At Col. 986, Vol. iii, read 6 Ind Cas 936 for 6 Ind Cas 986.

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* At Col 1648, Vol. vii, read 25 C. 649 for 25 C. 549.
† At Col. 825, Vol. viii, read 2 Suther 554 for 2 Suther 654.
‡ At Col. 1734, Vol. i, read 14 W R P C 28 for 14 W R P C 29.
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† At Col. 1352, Vol. vi, read 36 C. 184 for 36 C. 84.

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† At Col. 118, Vol. viii. read Bourke A O C 17 for Bourke A O C 117.
‡ At Col. 1727, Vol. i, read Bourke O C 111 for Bourke O C 11.

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* At Col. 1860, Vol. vii, read 2 W R 215 for 2 W R 315.
† At Col. 1418, Vol. iv, read 11 Ind Cas 846 for 11 Ind Cas 486.

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† At Col. 1756, Vol. ix, read A W N 1889, 149 for A W N 1887, 149.
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§ At Col. 1304, Vol. i, read 9 M L J 270 for 9 M L J 370.

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† At Col. 1071, Vol. ix, read 4 Ind Cas 126 for 5 Ind Cas 126.
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* At Col. 970, Vol. viii, read 14 W R 401 for 11 W R 401.

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* At Col. 543, Vol. v, read 16 A 359 for 16 A 349 and read A W N 1894, 119 for A W N 1894, 120.

† At Col. 454, Vol. iv, 8 is wrongly put before A W N 1884, 332.

‡ At Col. 165, Vol. ii, read 28 A 35 for 28 A 25.

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† At Col. 348, Vol. ix, read 13 Cr L J 296 for 13 Cr L J 297 and read 16 C L J 515 for 11 C L J 515.

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* At Col. 225, Vol. ix, read A W N 1881, 61 for A W N 1881, 60.

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† At Col. 834, Vol. viii, read 17 C W N 865 for 17 C W N 365.

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* At Col. 2260, Vol. iv, read 3 Sar 82 for 3 Sar 85.

† At Col. 1065, Vol. vii, read A W N 1884, 324 for A W N 1884, 325.

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† At Col. 158, Vol. ii, read 1 M H C 106 for 1 M 106.
‡ At Col. 1491, Vol. viii, read 1 A L J 466 for 1 A L 466.
§ At Col. 1964, Vol. i, read A W N 1899, 68 for A W N 1898, 68.

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* At Col. 2260, Vol. iv, read 3 Sar 82 for 3 Sar 85.

† At Col. 489, Vol. viii, read 6 Ind Cas 214 for 6 Ind Cas 24.

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* At Col. 2200, Vol. iv, read 112 P R 1888 for 132 P R 1888.

† At Col. 251, Vol. ii, and at Col. 1270, Vol. iii, read Joykalee Dasee *v.* Representative of Chandmalla.

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* At Col. 1872, Vol. ix, read W R F B 18 for U R F B 18.

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* At Col. 145, Vol. vii, read 16 Ind Cas. 401 for 16 Ind. Cas. 400.

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* At Col. 355, Vol. x, it is wrongly printed as Bourke, A.O.C. 162=Bourke, O.C. 250.

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† At Col. 820, Vol. vi, read 1 B L R A C 114 for B L R A C 114.
‡At Col. 622, Vol. iii, read Juggut Singh v. Bagh Singh, 4 P R 1870, Rev for Nowrung Singh v. Bhugut Singh, 4 P.R. 1870.

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* At Cols. 78, 104, Vol. iv, read 17 C 176, Note for 17 C 173, Note.
† At Col. 1879, Vol. iv, read 3 Sar 602 for 3 A 602.

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† At Col. 2260, Vol. iv, read 3 Sar 82 for 3 Sar 85.
‡ At Col. 1803, Vol. iv, read 11 W R P C 33 for 12 W R P C 33.
§ At Col. 1439, Vol. iv, read 8 Sar 855 for 8 Sar 885.

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† At Col. 743, Vol. ii, read 14 C W N 629 for 14 C W N 639.
‡ At Col. 1142, Vol. ix, read A W N 1892, 6 for A W N 1892, 5.

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† At Col. 1234, Vol. viii, read 1 Hay 430 for Hay 430.

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* At Col. 1601, Vol. viii, read 12 W R 461 for 12 W R 411.
† At Col. 1332, Vol. ix, read 14 W R 9 for 14 W R 19.

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* At Col. 159, Vol. vi, read 3 C L R 315 for 3 C L R 355.

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* At Col. 1101, Vol. iii. read 118 P R 1879 for 188 P R 1879.

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* At Col. 816, Vol. ii. read Goluck Money Dabee for Mashee Dabee.
† At Col. 170, Vol. viii, read 1 Sar 138 for 1 Sar 38.

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* At Col. 1127, Vol. ii, read 3 M L J 126 for 3 M L J 612.

† At Col. 1662, Vol. ii, read A W N 1885, 143 for A W N 1895, 143.

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* At Col. 1975, Vol. iv, read 9 M L J 127 for 9 M L J 197.
† At Col. 106, Vol. i, read 11 M L J 78 for 7 M L J 78.
‡ At Col. 1426, Vol. iv, read 1 M W N 1911, 365 for 2 M W N 1911, 365.
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* At Col. 575, Vol. iv, read 9 C L R 324 for 9 C L R 334.
† At Col. 156, Vol. viii, read W.R. 1864, 118 for W.R. 1864, 119.

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* At Col. 1549, Vol. vi, read A W N 1896, 71 for A W N 1896, 17.

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* At Col. 1437, Vol. iii, read 14 M 167 for 16 M 167.
† At Col. 1271, Vol. i, read 14 M 78 for 17 M 78.

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* At Col. 1485, Vol. vi, read 19 M 176 for 19 M 17.

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* At Col. 1585, Vol. ii, read 12 C L R 599 for 12 C L R 919.

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* At Col. 929, Vol. iv, read 43 P R 1909 for 46 P R 1909.
† At Col. 261, Vol. viii, read 8 Sar 839 for 8 Sar 855.

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* At Col. 898, Vol. ix, read 4 L B R 88 for 4 B L R 88.

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* At Col. 718, Vol. ii, read A.W.N. 1888, 33 for A.W.N. 1888, 43.
† At Col. 2220, Vol. iv, read 15 M L J 245 for 15 M L T 245.

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* At Col. 574, Vol. vi, read 10 B H C 487 for 10 B H C 48.
† At Col. 1553, Vol. i, read A.W.N. 1894, 110 for A.W.N. 1894, 111.

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† At Col. 542, Vol. viii, read 1 Ind Jur N S 122 for 1 Ind Jur N S 12.

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* At Col. 43, Vol. vii, read A W N 1884, 138 for 8 A W N 1884, 138.
† At Col. 1604, Vol. ix, read 19 C 623, F B for 19 B 623, F B.

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† At Col. 1576, Vol. iv, read 17 I A 134 for 17 A 134.
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† At Col. 1290, Vol. ii, read A W N 1903, 92 for A W N 1903, 93.
‡ At Col. 2240, Vol. ii, read 33 I A 128 for 33 I A 528.

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† At Col. 77, Vol. iv, read 8 Sar 583 for 5 Sar 583.

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† At Col. 1478, Vol. ii, read 1 Ind Cas 569 for 1 Ind Cas 509.

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* At Col. 1968, Vol. iii, read Marsh 377 for Marsh 337.

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† At Col. 1160, Vol. ix, read 7 C W N 441 for 1 C W N 441.

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* At Col. 845, Vol. ix, read P L R 1900, p. 451 for P L R 900, p 451.
† At Col. 1313, Vol. vi, read 32 A 410, for 31 A 410.
‡ At Col 194, Vol. viii, read 12 C W N 345, P C for 12 C W N 355, P C.

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* At Col. 1210, Vol. v, read 2 M L T 433 for 2 M L T 1.
† At Col. 776, Vol. i, read 37 C 742 for 34 C 742.

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* At Col. 2451, Vol. ii, read 4 Ind Cas 871 for 4 Ind Cas 87.
† At Col. 316, Vol. viii, read 11 M L J 210 for 11 M L J 215.

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* At Col. 1783, Vol. vii, read A W N 1898, 94 for A W N 1898, 99.
† At Col. 1555, Vol. iv, read A W N 1887, 118 for A W N 1887, 18.
‡ At. Col. 749, Vol. i, read 6 C W N 94 for 6 C W N 4.

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* At Col. 656, Vol. vii, read 4 I A 15 P C for 4 I A 51, P C.
† At Col. 1589, Vol. ii, read 19 M 140 for 19 M 145.

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* At Col. 2374, vol. ii, read Nathu Lal v. Zaru Mal for Ghulam Jilani v. Ghulam Haidar Khan.

† At Col. 352, vol. viii, read 7 A L J 602 for 7 A L J 752.

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* At Col. 2330, vol. ii, read 8 P R 1890, Rev. for 9 P R 1890, Rev.
† At Col. 316, vol. x, read 23 B. 80 for 23 B 82.
‡ At Col. 1115, vol. iii, read 154 P L R 1908 for 177 P L R 1908.

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* At Col. 831, vol. v, omit 168 P.R. 1912.
† At Col. 1313, Vol. vi, read 32 A 410 for 31 A 410.

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* At Col. 225, Vol. iii, read 22 B 899 for 22 B 599.
† At Col. 1717, Vol. vi, read 10 M L T 523 for 10 M L T 522.
‡ At Col. 219, Vol. i, read 13 B 302 for 3 B 302.
§ At Col. 200, Vol. viii, read 1 C L R 113 for 1 C L R 11.

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* At Col. 12. Vol. ii, read 2 Bom L R 938 for 2 Bom L R 939.
† At Col. 2228, Vol. iv, read 8 Ind Cas 385 for 8 Ind Cas 384.
‡ At these Cols. & Vols. read A W N. 1883, 59 for A W N 1883, 62.

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* At Col. 1354, Vol. i, read 75 P R 1901 for 175 P R 1901.
† At Col. 15, Vol. ix, read 16 Ind Cas 587 for 15 Ind Cas 587.
‡ At Col. 1550, Vol. vii, read 8 M L T 97 for 8 M L T 57.

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† At Col. 1157, Vol. iii, read 148 P R 1890 for 146 P R 1890.

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* At Col. 434, Vol. i, read 3 Ind Cas 964 for 3 Ind Cas 954.
† At Col. 393, Vol. ii, read 13 Bom L R 835 for 18 Bom L R 835.

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* At Col. 1573, Vol. iii read 8 C L R 443 for 8 C L R 433.
† At Col. 616, Vol. vii, read 7 M L J 198 for 9 M L J 198.

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* At Col. 1687, Vol. iv, omit 22 M 538.

† At Col. 1670, Vol. iv, read 12 M L J 299 for 2 M L J 299.

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* At Col. 2196, Vol. iv, read 34 A 207 for 34 A 407.
† At Col. 1194, Vol. i, read 4 M L J 85 for 4 M L J 86.
‡ At Col. 1547, Vol. vii, read 2 Sar 402 for 2 Sar 405.

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* At Cols. 159, 2017, Vol. iv, read 3 Sar. 344 for 3 Sar 341.

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* At Col. 1362, Vol. v, read 12 W R 465 for 12 W R 265.
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‡ At Col. 872, Vol. v, read 12 Ind Cas 482 for 12 Ind Cas 462.

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* At Col. 2172, Vol. iv, read 7 M L J 127 for M L J 27 and 7 Sar 194 for 7 Sar 222.

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* At Col. 159, Vol iv, read 3 Sar 344 for 3 Sar 341.

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† At Col. 1673, Vol. vi, read 35 C 420 for 35 C 320.

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† At Col. 2030, Vol. iii, omit A W N 1886, 286.

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* At Col. 548, Vol. i, 31 I A 17, P C is not equal to 31 C 1021.

† At Col. 700, Vol. viii, read 10 A L J 114 for 10 A L J 614.

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* At Col. 1771, Vol. ix read A W N 1901, 131 for A W N 1901, 13.
† At Col. 100, Vol. iv, read 4 C W N 304 for 4 C W N 301.
‡ At Col. 128, Vol. I and Col. 2118, Vol. iv read 3 B L R O C 130 for 3 B L R O C 1330.

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* At Col. 861, Vol. ii, and at Col. 937, Vol. v, read 3 I A 92 and 25 W R 239 respectively for 2 I A 92 and 25 W R 339.

† At Col. 1067, Vol. ix, read 7 Ind Cas 801 for 7 Ind Cas 180.

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† At Col. 1325, Vol. i, read 3 P R 1877, Rev for 3 P R 1877.
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† At Col. 1931, Vol. ix, read 125 P L R 1903 for 25 P L R 1903.

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* At Col. 476, Vol. x, read 8 Sar 1 for 18 Sar 1.

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* At Col. 801, Vol. iii, read 20 M L J 121 for 20 M L J 120.
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† At Col. 545, Vol. v, read 6 M L J 19, for 6 M L J 20.

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† At Cols. 861 and 937, Vols. ii and v, respectively, read 3 I A 92 for 2 I A 92; at Cols. 861, 1952, 820 and 937, Vols. ii, iii, iv and v, respectively, read 25 W R 239 for 25 W R 339.

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* At Col. 56, Vol. i, read 7 I A 196 for 7 I A 197.
† At Col. 193, Vol. vi, read W R 1864, Act X, Rul 113, for 3 W R 1864, Act X, Rul 113.

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* At Col. 709, Vol. iii, read 1 Sar 484 for 1 Sar 404.
† At Col. 1907, Vol. ix, read 2 Sar 530 for 2 Sar 297.

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† At Col. 883, Vol. vi, read 12 W R F B 14 for 12 W R 14.

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*At Col. 1124, Vol. v, read A W N 1894, 130 for A W N 1894, 132.
† At Col. 14, Vol. vii, read 9 M L T 294 for 9 M L T 136.

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*At Col. 425, Vol. iv, read 2 M L J 50 for 12 M J 50.
† At Col. 186, Vol. viii, read 7 Sar 247 for 1 Sar 247.

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* At Col. 1738. Vol. ix, read 2 M L T 75 for 2 M L T 175.
† At Col. 501, Vol. iv, read A W N 1885, 87 for A W N 1885, 187.
‡ At Col. 1939, Vol. i, omit 30 I A 20.

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† At Col. 1032, Vol. vii, read 6 Sar 150 for b Sar. 150.

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† At Col. 718, Vol. vii, read 7 B L R 706, Note for 7 B L R 406, Note.
‡ At Col. 807, Vol. iii, read 6 M L T 360 for 6 M L T 362.

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* At Col. 848, Vol. viii, read 4 C W N 513 for 14 C W N 513.
† At Col. 187, Vol. ix, read 5 B L R App 73, Note for 3 B L R App 73 Note.
‡ At Col. 27, Vol. iii, read A W N 1893, 180 for A W N 1893, 181.

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† At Col. 694, Vol. iii, omit 1 Ind Jur O S 102.

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* At Cols. 1224 and 1949, Vol. iv, read 25 M 697, Note for 25 M 698, Note.
† At Col. 152, Vol. x, read 1 Suther 483 for 1 Suther 480.

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* At Col. 2036, Vol. iv, read 6 M L J 39 for 6 M L J 40.
† At Col. 2413, Vol. ii, read 29 M 194 for 29 M 94.

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† At Col. 859, Vol. ix, it is wrongly printed as U.B.R. 1st Qr., Specific Relief, p. 3.
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